No. 79-408

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

CITY OF MILWAUKEE, THE SEWERAGE COMMISSION OF THE CITY OF MILWAUKEE, AND THE METROPOLITAN SEWERAGE COMMISSION OF THE COUNTY OF MILWAUKEE,

Petitioners,

vs.

PEOPLE OF THE STATE OF ILLINOIS AND PEOPLE OF THE STATE OF MICHIGAN,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

APPENDIX TO BRIEF OF RESPONDENT PEOPLE OF THE STATE OF ILLINOIS

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APPENDIX TO BRIEF FOR RESPONDENT PEOPLE OF THE STATE OF ILLINOIS

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I.

STATUTORY PROVISIONS INVOLVED

A.

U.S. Constitution

1. Article III.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of

the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

2. Article VI, cl. 2.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

B.

Federal Statutes Governing Subject Matter Jurisdiction and Choice of Law

1. 28 U.S.C. § 1251.

(a) The Supreme Court shall have original and exclusive jurisdiction of:

(1) All controversies between two or more States;

(2) All actions or proceedings against ambassadors or other public ministers of foreign states or their domestics or domestic servants, not inconsistent with the law of nations.

(b) The Supreme Court shall have original but not exclusive jurisdiction of:

(1) All actions or proceedings brought by ambassadors or other public ministers of foreign states or to which consuls or vice consuls of foreign states are parties;

(2) All controversies between the United States and a State;

(3) All actions or proceedings by a State against the citizens of another State or against aliens.

2. 28 U.S.C. § 1652

The laws of the several states, except where the constitution, treaties or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply.

C.

State Statutes Relating to Causes of Action Asserted

1. Ill. Rev. Stat. ch. 111½ § 1012(a) (1979).

§ 1012. No person shall:

(a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act;

2. Ill. Rev. Stat. ch. 14 §§ 11, 12 (1979).

§ 11 Definitions. The following items as used in this Act shall, unless the context otherwise requires, have the following meanings:

(a) "Air pollution" means air pollution as defined in the Environmental Protection Act, enacted by the 76th General Assembly.

(b) "Water pollution" means water pollution as defined in the Environmental Protection Act, enacted by the 76th General Assembly.

(c) "Land pollution" means land pollution and refuse disposal as set out in the Environmental Protection Act enacted by the 76th General Assembly.

§ 12 The Attorney General has the power and authority, notwithstanding and regardless of any proceeding instituted or to be instituted by or before the Environmental Protection Agency, Pollution Control Board or any other administrative agency, to prevent air, land or water pollution within this State by commencing an action or proceeding in the circuit court of any county in which such pollution has been, or is about to be, caused or has occurred, in order to have such pollution stopped or prevented either by mandamus or injunction. The court shall specify a time, not exceeding 21 days after the service of the copy of the petition of mandamus or injunction for answer, and in the meantime the party shall be restrained from continuing such pollution pending hearing before the court. In case of default, or after answer, the court shall immediately inquire into the facts and circumstances of the case and enter an appropriate order in respect to the matters complained of. An appeal may be taken from the final judgment in the same manner and with the same effect as appeals are taken from judgments of the circuit court in other actions for mandamus or injunction.

D.

Statutes With Respect To *In Personam* Jurisdiction

1. Fed. R. Civ. P. 4(e).

(e) *Same: Service Upon Party Not Inhabitant Of Or Found Within State.* Whenever a statute of the United States or an order of court thereunder provides for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state in which the district court is held, service may be made under the circumstances and in the manner prescribed by the statute or order, or, if there is no provision therein prescribing the manner of service, in a manner stated in this rule. Whenever a statute or rule of court of the state in which the district court is held provides (1) for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state, or (2) for service upon or notice to him to appear and respond or defend in an action by reason of the attachment or garnishment or similar seizure of his property located within the state, service may in either case be made under the circumstances and in the manner prescribed in the statute or rule.

2. Ill. Rev. Stat. ch. 110 §§ 16, 17.

§ 16 Personal service outside State.

(1) Personal service of summons may be made upon any party outside the State. If upon a citizen or resident of this State or upon a person who has submitted to the jurisdiction of the courts of this State, it shall have the force and effect of personal service of summons within this State; otherwise it shall have the force and effect of service by publication.

(2) The service of summons shall be made in like manner as service within this State, by any person over 18 years of age not a party to the action. No order of court is required. An

affidavit of the server shall be filed stating the time, manner and place of service. The court may consider the affidavit, or any other competent proofs, in determining whether service has been properly made.

(3) No default shall be entered until the expiration of at least 30 days after service. A default judgment rendered on such service may be set aside only on a showing which would be timely and sufficient to set aside a default judgment rendered on personal service within this State.

§ 17 Act submitting to jurisdiction—Process.

(1) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person, and, if an individual, his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of such acts:

(a) The transaction of any business within this State;

(b) The commission of a tortious act within this State;

(c) The ownership, use, or possession of any real estate situated in this State;

(d) Contracting to insure any person, property or risk located within this State at the time of contracting;

(e) With respect to actions of dissolution of marriage and legal separation, the maintenance in this State of a matrimonial domicile.

(2) Service of process upon any person who is subject to the jurisdiction of the courts of this State, as provided in this Section, may be made by personally serving the summons upon the defendant outside this State, as provided in this Act, with the same force and effect as though summons had been personally served within this State.

(3) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this Section.

(4) Nothing herein contained limits or affects the right to serve any process in any other manner now or hereafter provided by law.

E.

Statutes Governing Venue

42 U.S.C. § 1391(b).

(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, or in which the claim arose, except as otherwise provided by law.

F.

Statutory Provisions Relating to Defenses by Milwaukee

Cost-Effective

1. 33 U.S.C. § 1292(2)(B), (C).

(B) In addition to the definition contained in subparagraph (A) of this paragraph, "treatment works" means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems. Any application for construction grants which includes wholly or in part such methods or systems shall, in accordance with guidelines published by the Administrator pursuant to subparagraph (C) of this paragraph, contain adequate data and analysis demonstrating such proposal to be, over the life of such

works, the most cost efficient alternative to comply with sections 301 or 302 of this act, or the requirements of section 201 of this act.

(C) For the purposes of subparagraph (B) of this paragraph, the Administrator shall, within one hundred and eighty days after the date of enactment of this title, publish and thereafter revise no less often than annually, guidelines for the evaluation of methods, including cost-effective analysis, described in subparagraph (B) of this paragraph.

2. 33 C.F.R. Part 35, subpart E, Appendix A [43 Fed. Reg. 44807 (September 27, 1978)].

* * *

4. *Definitions.* Terms used in these guidelines are defined as follows:

* * *

b. *Cost-effectiveness analysis.* An analysis performed to determine which waste treatment management system or component part will result in the minimum total resources costs over time to meet Federal, State, or local requirements.

* * *

G.

Statutory Provisions Relating To Congressional Intent To Preserve The Application Of State Statutory Law And Common Law To Impose More Stringent Antipollution Control Through Either Administrative Or Judicial Action.

1. 33 U.S.C. § 1365(e).

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or

common law to seek enforcement of any effluent standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

2. 33 U.S.C. § 1370.

Except as expressly provided in this Act, nothing in this Act shall (1) preclude or deny the right of any State or political subdivision thereof or interstate agency to adopt or enforce (A) any standard or limitation respecting discharges of pollutants, or (B) any requirement respecting control or abatement of pollution; except that if an effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance is in effect under this Act, such State or political subdivision or interstate agency may not adopt or enforce any effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance which is less stringent than the effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance under this Act; or (2) be construed as impairing or in any manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such States.

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Anthony S. Earl
Secretary

BOX 7921
MADISON, WISCONSIN 53707

CERTIFIED MAIL **IN REPLY REFER TO: 3420**
RETURN RECEIPT REQUESTED **WI-0026875-1**

Messrs. Herbert A. Goetsch, Comm. of Public Works &
Edwin J. Laszewski, City Engineer
City of Milwaukee
841 North Broadway, Room 516
Milwaukee, Wisconsin 53200

RE: Modification of WPDES Permit No. WI-0026875

Dear Sirs:

The request for modification of Wisconsin Pollutant Discharge Elimination System (WPDES) Permit No. WI-0026875 initiated by you on April 13, 1976 has been processed in accordance with Section 147.03, Wisconsin Statutes. This modification updates the original permit incorporating all past modifications and the recent request adding 18 sanitary sewer relief sites and deleting the crossovers which have been eliminated. It also adds in Part A.6, the requirement for a program of identification and correction of illegal connections in the sanitary sewer system tributary to the 18 added relief sites.

The pages which are attached, namely, page 1 of 8 through 8 of 8 of Part II, dated December 10, 1976, replace page 1 of 7 through page 7 of 7 of Part II of the original permit issued on December 18, 1974. Please replace the original pages with these attached pages in all copies of the permit which you retain in your records. All discharges from this facility and actions or reports relating thereto shall be in accordance with the terms and conditions of the original permit as modified.

The WPDES permit program has been approved by the Administrator of the U.S. Environmental Protection Agency pursuant to Section 402(b) of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. Section 1342(b)). Therefore, this permit is subject to enforcement under Section 147.21 and 147.29, Wisconsin Statutes and Section 309 of the Federal Act (33 U.S.C. Section 1319).

Andrew C. Damon
Administrator
Division of Enforcement

Dated Dec 17, 1976
Enclosures
Permit

cc: U.S. Environmental Protection Agency
ATTN: Permits Branch
Southeast District
Southeastern WI-RPC

December 17, 1976

SPECIAL CONDITIONS[1]

A. Sanitary Sewer Crossovers (Gravity) and Electrically Operated Relief Pumps—Discharge Serial Number 001 through 089.

The City of Milwaukee is required to initiate a program leading to the elimination of the sanitary sewer crossovers (gravity) and the electrically operated relief pumps at discharge points 001 through 089 (as identified below) to assure attainment of all applicable Water Quality Standards.

1. On or before December 31, 1975, the City shall submit to the Wisconsin Department of Natural Resources a plan for the elimination of discharge points 001 through 089. Such plan shall include alternative engineering solutions for the elimination of each discharge point, a recommended solution for the elimination of each discharge point, an estimate of cost for the elimination of each discharge point and a time schedule for the elimination of each discharge point. If it is determined by the Department that the plan is incomplete or inadequate, the plan may be returned to the City with the reasons therefor, following which the plan shall be modified by the City and resubmitted within 60 days. After acceptance by the Department of an adequate plan, this permit may be modified to incorporate the specific provisions and time schedules contained in the plan.

2. On or before March 31, 1975, the City shall submit to the Department a listing of discharge 001 through 089 which identifies which of the discharges take place under normal dry weather conditions and which take place only under wet weather conditions.

---

[1] This listing includes all past modifications, and the discharge serial numbers may vary from those specifically identified in the text. Provisions of the permit apply to all new additions.

3. On or before June 30, 1975, the City shall complete "Attachment A" for each discharge 001 through 089, and submit the completed forms to the Department.

4. On or before September 30, 1976, the City shall prepare and submit to the Department an Infiltration/Inflow Analysis for the separate sanitary sewer system. The Analysis shall be based on the Federal Guidelines for Sewer System Evaluation, March, 1974, EPA 520/9-74-018. On or before March 31, 1975, the City shall submit to the Department a plan of study for conduction the Infiltration/Inflow Analysis; such plan of study to include a time schedule for the accomplishment of specific tasks. Based on the results of the Analysis, a more detailed sewer system evaluation survey may be required.

5. On or before March 31, 1975, the City shall identify to the Department 10 discharge points (chosen from 001 through 089) which are considered by the City to have the most significant impact on water quality. Following concurrence by the Department, the City shall by December 31, 1975, install equipment to continuously measure all flows discharged from the 10 selected discharges and shall install equipment to adequately sample the flow discharged. Beginning on March 31, 1976, and every three months thereafter until the discharges are eliminated, the City shall submit a report to the Department containing data on the date of discharge, volume of discharge and sample analysis for each discharge. Each sample shall be analyzed [*sic*] for BOC, Suspended Solids, pH, Fecal Coliform and any other parameter that the Department may require.

6. For discharge points 089f, 089g, 089h, 089i, 089j, 089k, 089L, 089m, 089n, 089o, 089p, 089q, 089r, 089s, 089t, 089u, 089v, 089w, the City shall institute a program to identify any and all illegal clear water connections in the tributary sanitary sewer system, including but not be

limited to, roof drains, foundation drains, and storm water inlets. By October 1, 1977[2], the City shall submit for approval a report to the Department detailing the method and manpower used in the identification program, indicating the type and location of all illegal connections found and establishing a program and time schedule for correction of the illegal connections.

Serial Number	Location
002	N. 30th Street and W. Hope Avenue
003	N. 31st Street (Ext) and W. Hope Avenue (Ext)
004	N. 31st Street and W. Villard Avenue (12" diameter crossover)
006	N. 41st Street and W. Congress Street
010	N. 68th Street and W. Center Street
011	N. 20th Street at W. Fairmount Avenue
015	W. Capitol Drive (N/S) and N. 31st Street
016	W. Capitol Drive (S/S) and N. 31st Street
017	W. Sherman Boulevard and W. Fond du Lac Avenue
019	N. 36th Street between W. Carmen Avenue and W. Florist Ave.
021	W. Center Street at N. 86th Street
022	N. 35th Street, 40 feet north of W. Oriole Drive
023	S. 36th Street at W. Lakefield Drive
024	W. Center Street at N. 88th Street
025	W. Ruskin Street at S. 38th Street
026	W. Silver Spring Drive at N. 38th Street
027	W. Silver Spring Drive at N. 37th Street
028	W. Silver Spring Drive at N. 36th Street
029	W. Silver Spring Drive at N. 35th Street
031	N. 89th Street at W. Townsend Street
032	N. 90th Street at W. Townsend Street
033	W. Dickinson Street and S. 62nd Street
034	W. Hope Avenue and N. 47th Street

Serial Number	Location
035	W. Silver Spring Drive and N. 39th Street
036	W. Silver Spring Drive and N. 41st Street
037	W. Stevenson Street and N. 71st Street
038	W. Mt. Vernon Avenue and N. 69th Street
039	W. Morgan Avenue at S. 57th Street
041	W. Mt. Vernon Avenue at 75 feet east of N. 91st Street
042	N. 41st Street and Congress Street
043	N. 66th Street 1/2 block between W. Congress Street & W. Ruby Ave.
044	N. 94th Street and W. Townsend Street
045	N. 95th Street and W. Metcalf Pl.
046	E. Armor Avenue 69 feet west of S. Austin Street
047	N. 89th Street and W. Center Street
048	N. 87th Street and W. Center Street
049	N. 44th Street 285 feet south of W. Burleigh Street
050	N. 53rd Street at W. Glendale Avenue
051	N. 53rd Street at W. Courtland Avenue (Ext)
052	S. Austin Street at W. Dakota Street
053	N. 27th Street 404 feet south of W. Hope Avenue
054	E. Ohio Street and S. Quincy Avenue
055	W. Lawn Avenue and N. Milwaukee River Parkway
056	N. Milwaukee River Parkway and vacated W. Wilson Drive
057	W. Fairmont Avenue and N. 19th Place
058	W. Fairmont Avenue and N. Green Bay Road
059	S. 43rd Street and W. Morgan Avenue
*060	N. 20th Street at W. Hampton Avenue (North Side)
*061	N. 20th Street at W. Hampton Avenue (South Side)
*062	N. 19th Place at W. Fairmont Avenue
*063	N. 49th Street at W. Luscher Avenue
*064	N. 60th Street at Custer Avenue

Serial Number	Location
*065	5384 N. 60th Street
*066	N. 61st Street at W. Lawn Avenue
*067	5373 N. 60th Street
*068	5344 N. 60th Street
*069	N. 63rd Street at W. Fairmount Avenue
*070	N. 64th Street at W. Stark Street
*071	5030 N. 55th Street
*072	N. 66th Street at W. Ruby Avenue
*073	N. 96th Street at W. Auer Avenue
*074	N. 99th Street at W. Concordia Avenue
*075	S. 46th Street at W. Cleveland Avenue
*076	Mid-block W. Lincoln Ave. between S. 36th Street & S. 37th St.
*077	N. Milwaukee River Parkway at W. Lawn Avenue
*078	N. Milwaukee River Parkway, north of W. Lawn Avenue
*079	N. 58th Street at W. Sheridan Avenue
*080	S. 72nd Street at W. Honey Creek Parkway
*081	S. 77th Street at W. Oklahoma Avenue
*082	3253 S. 57th Street
*083	S. 54th Street at W. Midland Drive
*084	92nd Street at W. Howard Avenue
*086	S. Howell Avenue at E. Edgerton Avenue
*087	S. Burrell Street at E. Van Norman Avenue
*088	W. Monrovia Avenue at W. Crossfield Avenue
*089	S. 94th Street at W. Howard Avenue
089a	W. Olive, 435 feet SE of W. Roosevelt
089c	N. 89th and W. Center (south half)
089d	N. 92nd and W. Hawthorne
089e	N. 92nd and W. Park Hill
*089f	S. 1st Place and W. Bolivar Avenue (S/S)
*089g	N. 37th Street and W. Kiley Avenue
*089h	N. 43rd St. (W/S) and W. Douglas Avenue
*089i	N. 53rd Street and W. Sheridan Avenue

* Electric Relief Pump at this location.

Serial Number	Location
*089j	N. 57th Street and W. Silver Spring Drive (N/S)
*089k	N. 60th Street (W/S) and W. Thurston Avenue
* 089L	W. Riverbend Drive and S. Honey Creek Parkway
*089m	N. 72nd Street and W. Fairmount Avenue
*089n	N. 72nd Street and W. Hope Avenue
*089o	S. 86th and W. Ohio Avenue
*089p	N. 106th Street and W. Lawn Avenue
*089q	N. 107th Street and W. Silver Spring Drive (S/S)
*089r	W. Green Ave., Mid-block between W. Iona Terr. & S. 31st St.
*089s	W. Parnell Avenue and S. Honey Creek Drive
*089t	S. Pine Avenue and E. Cudahy Avenue
*089u	N. 72nd Street and W. Capitol Drive
*089v	N. 74th Street and W. Potomac
089w	East Newport Court, 415 feet E. of North Lake Drive

B.[1] Combined Sewer Crossovers and Overflows—Discharge Serial Number 090 through 213.

The City of Milwaukee is required to initiate a program leading to the attainment of control of overflows from the City's combined sewer system at discharge points 090 through 213 (as identified below), to assure attainment of all applicable Water Quality Standards.

1. The City is to cooperate with and assist the Sewerage Commission of the City of Milwaukee in the conduct and completion of the facilities planning as provided in Treatment Works Grant C550772-01. The facilities planning elements include a feasibility study, cost-effectiveness analysis and environmental assessment for elimination or control of the discharges from the combined sewers.

---

* Electric Relief Pump at this location.

[1] This listing includes all past modifications, and the discharge serial numbers may vary from those specifically identified in the text. Provisions of the permit apply to all new additions.

2. Beginning on March 31, 1975 and continuing every three months thereafter until completion of the facilities planning, the City shall submit progress reports to the Department of Natural Resources, WPDES Permit Section.

3. On or before March 31, 1975, the City shall submit to the Department a listing of discharges 090 through 213 which identifies which of the discharges take place under normal dry weather conditions and which taken [*sic*] place only under wet weather conditions.

4. On or before June 30, 1975, the City shall complete "Attachment A" for each discharge 090 through 213, and submit the completed forms to the Department.

5. On or before March 31, 1975, the City shall identify to the Department 15 discharge points (chosen from 090 through 213) which are considered by the City to have the most significant impact on water quality. Following concurrence by the Department, the City shall by December 31, 1975, install equipment to continuously measure all flows discharged from the 15 selected discharges and shall install equipment to adequately sample the flow discharged. Beginning March 31, 1976, and every three months thereafter until the discharges are eliminated or controlled, the City shall submit a report to the Department containing data on the date of discharge, volume of discharge and sample analysis for each discharge. Each sample shall be analyzed for BOD, Suspended Solids, pH, Fecal Coliform and any other parameter that the Department may require. In the event the facilities planning referred to in (a) above identifies more than 15 discharges which will be monitored, the City shall submit, on a quarterly basis, information on all discharges monitored beginning at the close of the quarter during which the monitoring is initiated.

Serial Number	Location
090	N. 26th Street and W. Vienna Avenue
091	N. 37th Street 145 feet north of W. Mt. Vernon Avenue
092	N. 38th Street and W. Mt. Vernon Avenue
093	N. 46th Street and W. State Street
094	E. Meinecke Avenue and N. Gordon Place
095	W. Hilda Place and S. 38th Street
096	N. Sherman Boulevard at W. Burleigh Street
097	E. Lincoln Avenue at S. Burrell Street
098	E. Lincoln Avenue 150 feet west of S. Greeley Street
099	E. Lincoln Avenue 450 feet west of S. Greeley Street
186a	E. 5th Pl., 175 feet south of W. Harrison Avenue

Combined Sewer Overflows to the Milwaukee River

Serial Number	Location	Size
101	E. Capitol Drive	72″
102	E. Keefe Avenue	54″
103	E. Edgewood Avenue	72″
105	E. Auer Avenue	84″
106	E. Hampshire Street	24″
107	E. Burleigh Street	Dbl—9′6″ × 4′3″
108	E. Chambers Street	21″
109	E. Locust Street	78″
110	E. Park Pl.	60″
111	E. Bradford Avenue	72″
112	E. Boylston Street	72″
113	E. Tunnel Pl.	12″
114	N. Pulaski Street	72″
115	N. Humboldt Avenue	72″
118	N. Marshall Street	24″
119	N. Holton Street	7′ × 4′
120	E. Brady Street	30″
121	N. of E. Walnut Street	96″

Serial Number	Location	Size
122	E. Walnut Street	42″
123	E. Pleasant Street	7′ × 3′
124	N. of W. Cherry Street	5′ × 4′
125	W. Cherry Street	90″
126	E. Lyon Street	18″
127	E. Ogden Avenue	6′ × 3′
128	W. McKinley Avenue	60″
129	W. Juneau Avenue	42″
130	E. Juneau Avenue	42″
131	W. Highland Avenue	9′3″ × 4′6″
132	E. Highland Avenue	36″
133	W. State Street	46″
134	E. State Street	60″
136	W. Kilbourn Avenue	4′6″ × 6′
137	E. Kilbourne Avenue	54″
138	N. of W. Wells Street	30″
139	W. Wells Street	48″
140	E. Wells Street	48″
141	N. of W. Wisconsin Avenue	18″ × 30′
142	W. Wisconsin Avenue	24″
143	E. Wisconsin Avenue	30″
145	W. Michigan Street	54″
146	E. Michigan Street	42″
147	N. of W. Clybourn Street	24″ × 26″
148	W. Clybourn Street	48″
149	E. Clybourn Street	Dbl-48″
150	N. of W. St. Paul Avenue	30″
151	W. St. Paul Avenue	6′ × 3′
152	E. St. Paul Avenue	8′6″ × 4′0″
153	E. Buffalo Street	42″
154	E. Chicago Street	6′ × 4′3″
155	S. 1st Street	24″
156	S. Water Street	24″

Serial Number	Location	Size
157	E. Pittsburg Avenue	24″
158	N. Broadway	30″
159	S. of E. Oregon Street	30″
160	E. Florida Street	60″
161	E. Polk Street	54″
163	E. Bruce Street	24″
164a	E. Lyon Street	38″ × 60″
203a	N. 35th Street and W. Congress St.	Dbl. 10′0″ x 7′6″

Combined Sewer Overflows to the Kinnickinnic River

Series Number	Location	Size
165	E. National Avenue	48″
166	E. Walker Street	6′ × 4′6″
167	S. of E. Walker Street	Dbl. 6′6″ × 5′0″
168	S. of E. Washington Street	36″
169	E. Greenfield Avenue	5′6″ × 3′0″
170	S. Kinnickinnic Avenue	30″
171	S. Kinnickinnic Avenue	60″
172	S. 1st Street	42″
173	S. 1st Street	42″
174	S. 2nd Street	78″
175	W. Rogers Street	72″
176	W. Becher Street	12′ × 6′
177	W. Becher Street	96″
178	W. Lincoln Avenue	30″
179	W. Lincoln Avenue	48″
180	S. Chase Avenue	18″
181	S. Chase Avenue	10′ × 5′
182	W. Cleveland Avenue	72″
183	W. Cleveland Avenue	84″
184	S. 8th Street	9′ × 6″
185	S. 14th Street	10′ × 5′
186	S. 27th Street	72″

Combined Sewer Overflows to the Menomonee River

Serial Number	Location	Size
187	S. 2nd Street	54″
189	N. Muskego Avenue	30″
190	N. Muskego Avenue	54″
191	N. 15th Street	Dbl. 7′ × 4′
192	N. 15th Street	7′ × 4′
193	N. 17th Street	5′9″ × 3′6″
194	N. 25th Street	Dbl. 7′ x 7′
195	N. 26th Street	Trp. 7′ x 6′
196	S. 27th Street	48″
197	S. 27th Street	48″
198	S. 35th Street	60″
199	W. Wisconsin Avenue	24″
200	W. Wisconsin Avenue	24″
201	N. 43rd Street	12′ × 6′
202	N. 45th Street	42″
203	N. Hawley Road	8′6″ x 5′0″
203b	N. 9th Street (Ext'd)	96″
203c	S. Stadium Acces [*sic*] Rd. (Ext'd)	Trp. 48′ x 52″ & Dbl. 78″

Combined Sewer Overflows to the South Menomonee Canal—Branch of Menomonee River

Serial Number	Location	Size
204	S. 4th Street	48″
205	S. 6th Street	30″

Combined Sewer Overflows to Burnham's Canal—Branch of Menomonee River

Serial Number	Location	Size
206	S. 9th Street	36″
207	S. 9th Street	78″
208	S. 11th Street	36″
209	S. 13th Street	36″
210	S. 13th Street	60″
211	S. Muskego Avenue	54″

Combined Sewer Overflows to Lake Michigan

Serial Number	Location	Size
212	E. Bay Street	Dbl. 7'6" × 6'6"
213	E. Russel Avenue	10'

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES
Anthony S. Earl
Secretary
BOX 7921
MADISON, WISCONSIN 53707

CERTIFIED MAIL
RETURN RECEIPT REQUESTED IN REPLY REFER TO: 3420

Mr. Herbert A. Goetsch
Commissioner of Public Works
City of Milwaukee
841 North Broadway—Room 516
Milwaukee, Wisconsin 53202

Re: WPDES Permit No. WI-0026875

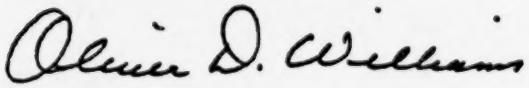
Dear Mr. Goetsch:

Your application WI-0026875 for a Wisconsin Pollutant Discharge Elimination System (WPDES) Permit has been processed in accordance with Section 147.02 and 147.025, Wisconsin Statutes.

The enclosed WPDES permit covers the discharges from the facility located at City of Milwaukee Sanitary Sewer crossovers, combined sewer crossovers, and combined sewer overflows into Milwaukee River, Kinnickinnic River, Menomonee River, South Menomonee Canal-Branch of Menomonee River, Burnham's Canal-Branch of Menomonee River and Lake Michigan. All discharges from this facility and actions or reports relating thereto shall be in accordance with the terms and conditions of this permit.

The WPDES permit program has been approved by the Administrator of the U.S. Environmental Protection Agency pursuant to Section 402(b) of the Federal Water Pollution

Control Act Amendments of 1972 (33 U.S.C. Section 1342(b)). The terms and conditions of this permit are accordingly subject to enforcement under Section 147.21 and 147.29, Wisconsin Statutes and Section 309 of the Federal Act (33 U.S.C. Section 1319).



Oliver D. Williams
Acting Administrator
Division of Environmental Standards

Dated December 18, 1974
Enclosures
Permit
Reporting Forms

cc: U.S. Environmental Protection Agency
ATTN: Permits Branch
Southeast District

PERMIT TO DISCHARGE UNDER THE WISCONSIN POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of Chapter 147, Wisconsin Statutes, THE CITY OF MILWAUKEE

is permitted to discharge from ITS SANITARY SEWER CROSSOVER, COMBINED SEWER CROSSOVERS, AND COMBINED SEWER OVERFLOWS

TO MILWAUKEE RIVER, KINNICKINNIC RIVER, MENOMONEE RIVER, SOUTH MENOMONEE CANAL, BURNHAM'S CANAL AND LAKE MICHIGAN

in accordance with the effluent limitations, monitoring requirements and other conditions set forth in Parts I and II hereof.

This permit shall become effective on the date of signature.

This permit to discharge shall expire at midnight, June 30, 1977.

Permittee shall not discharge after the date of expiration. If the permittee wishes to continue to discharge after this expiration date he shall file an application for reissuance of his permit in accordance with the requirements of Chapter NR 200, Wisconsin Administrative Code, at least 180 days prior to this expiration date.

State of Wisconsin Department of Natural Resources
For the Secretary

By Oliver D. Williams

Oliver D. Williams
Acting Administrator
Division of Environmental Standards

Dated this 18th day of December, 1974

GENERAL CONDITIONS

1. Compliance

All discharges authorized herein shall be consistent with the terms and conditions of this permit. The discharge of any pollutant identified in this permit more frequently than or at a level in excess of that authorized shall constitute a violation of the permit.

2. Adverse Impact

The permittee shall take all reasonable steps to minimize any adverse impact on waters of the State resulting from noncompliance with any effluent limitations specified in this permit, including such special or additional monitoring as may be required by the Department or may be necessary to determine the nature and impact of the noncomplying discharge.

3. Removed Substances

Solids, sludges, filter backwash or other pollutants removed from or resulting from treatment or control of wastewaters or intake waters shall be stored and disposed of in a manner such as to prevent any pollutant from such materials from entering the waters of the State. Land disposal of treatment plant solids and sludges shall be either at a site or operation licensed by the Department under Chapter NR 151, Wisconsin Administrative Code, or in accordance with a sludge disposal plan approved by the Department.

4. Right of Entry

The permittee shall allow authorized representatives of the Department of Natural Resources, and the Administrator of the United States Environmental Protection Agency or his authorized representatives, upon the presentation of credentials:

a. To enter upon the permittee's premises where an effluent source is located or in which any records are required to be kept under the terms and conditions of this permit; and

b. At reasonable times to have access to and copy any records required to be kept under the terms and conditions of this permit; to inspect any monitoring equipment or monitoring method required in this permit; and to sample any wastewaters.

5. Permit Modification

After notice and opportunity for a hearing as provided in Section 147.03, Wisconsin Statutes, this permit may be modified, suspended, or revoked in whole or in part during its term for cause including, but not limited to, the following:

a. Violation of any terms or conditions of this permit;

b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or

c. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

6. Toxic Pollutants

Nothing in this permit shall be construed to authorize the discharge of any toxic pollutant or combination of pollutants in amounts or concentrations which exceed any applicable toxic effluent standard or prohibition, including any schedule of compliance specified in any such effluent standard or prohibition, promulgated under Section 147.07(1), Wisconsin Statutes.

If a toxic effluent standard or prohibition, including any schedule of compliance specified in such effluent standard or prohibition, is promulgated under Section 147.07(1), Wiscon-

sin Statutes, for a toxic pollutant or combination of pollutants which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in this permit, this permit shall be revised or modified in accordance with the toxic effluent standard or prohibition.

7. Civil and Criminal Liability

Except as provided in permit conditions on "Bypassing" (Part I,23) and "Power Failures" (Part I,24), nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties under Section 147.21, Wisconsin Statutes, for noncompliance with the terms and conditions of this permit.

8. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1321).

9. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other applicable State law or regulation.

10. Property Rights

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

11. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

12. Schedule of Compliance Progress Reports

No later than 14 calendar days following a date identified in any schedule of compliance in Part II, the permittee shall submit either a report of progress or, in the case of specific actions being required by identified dates, a written notice of compliance or noncompliance. In the latter case, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirements.

13. Test Procedures

Test procedures used for the analysis of pollutants shall be those listed in C .pter NR 219, Wisconsin Administrative Code, or an alternate method authorized in Part II.

14. Recording of Results

For each measurement of sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

a. The exact place, date, and time of sampling;

b. The dates the analyses were performed;

c. The person(s) who performed the analyses;

d. The analytical techniques or methods used; and

e. The results of all required analyses.

15. Additional Monitoring by Permittee

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified in Chapter NR 219, the results of such monitoring shall be reported to the Department on a quarterly basis.

16. Records Retention

All records and information resulting from the monitoring activities required by this permit including all records of analyses performed and calibration and maintenance of instrumentation and recordings from continuous monitoring instrumentation shall be retained for a minimum of three (3) years, or longer if requested by the Department of Natural Resources.

17. Construction of Onshore or Offshore Structures

This permit does not authorize or approve the construction of any onshore or offshore physical structure of facilities or the undertaking of any work in any navigable waters.

18. Confidential Information

Except for data determined to be confidential under Section 147.08(2)(c), Wisconsin Statutes, all monitoring reports required by this permit shall be available for public inspection at the headquarters of U.S. EPA Region V and the Department of Natural Resources. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in Section 147.21, Wisconsin Statutes.

19. Transfer of Control of Operation

In the event of a transfer of control of operation of the facility from which the permitted discharges emanate to a person not named on page one (1) of this permit, the permittee

prior to such transfer shall notify his successor by letter that this permit is not transferable and that prior to any discharge after such transfer, a new WPDES permit must be obtained. A copy of this letter shall be forwarded to the Department of Natural Resources, WPDES Permit Section, Box 450, Madison, Wisconsin 53701.

20. Change in Discharge

Facility modifications, additions, and/or expansions that increase the plant capacity must be reported to the Department and this permit then modified or reissued to reflect such changes. Any anticipated change in the facility discharge, including any new significant industrial discharge or significant changes in the quantity or quality of existing industrial discharges of pollutants must be reported to the Department. Modifications to the permit may then be made to reflect any necessary changes in permit conditions, including any necessary effluent limitations for any pollutants not identified and limited herein. In no case are any new connections, increased flows, or significant changes in influent quality permitted that will cause violation of the effluent limitations specified herein.

21. Noncompliance Notification

If for any reason the permittee does not comply with or will be unable to comply with any effluent limitations specified in this permit, or should any unusual or extraordinary discharge of wastes occur from the facilities herein permitted, the permittee shall provide the Department in writing within five days of such occurrence with the following information:

a. A description of the noncomplying discharge including its impact upon the receiving waters.

b. Cause of noncompliance.

c. Anticipated time the condition of noncompliance is expected to continue, or if such condition has been corrected, the duration of the period of noncompliance.

d. Steps taken by the permittee to reduce and eliminate the noncomplying discharge.

e. Steps to be taken by the permittee to prevent recurrence of the condition of noncompliance.

22. Facility Operation and Quality Control

All waste collection, control, treatment and disposal facilities shall be operated in a manner consistent with the following:

a. At all times, all facilities shall be operated as efficiently as possible and in a manner which will minimize discharges of excessive pollutants.

b. Maintenance of the sewer system that results in discharge of untreated wastes to surface waters shall be scheduled during non-critical water quality periods and shall be carried out in a manner approved by the Department.

23. Power Failures

The permittee is responsible for maintaining adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failure either by means of alternate power sources, standby generators or retention of inadequately treated effluent. Should the treatment works not have the above capabilities at the time of permit issuance, the permittee must furnish within 120 days to the Department, for approval, plans for such facilities and an implementation schedule for their installation.

24. Pretreatment

The permittee shall require any industrial user of the sewer collection system to provide pretreatment as required under Section 147.07(2), Wisconsin Statutes, to provide any records, reports or information related to any pretreatment or new

source performance standards. Any industrial user of the sewer collection system shall be required by the permittee to prepare and submit to the WPDES Permit Section periodic notices of progress toward full compliance with the requirements of Section 147.07(2), Wisconsin Statutes. Such notices shall be submitted at intervals not to exceed nine (9) months or as required elsewhere in this permit.

25. Prohibited Wastes

Under no circumstances shall the permittee allow introduction into the sewer collection system wastes prohibited by NR 211.10, Wisconsin Administrative Code, which include those

a. Which create a fire or explosion hazard in the treatment works,

b. Which will cause corrosive structural damage to treatment works,

c. Solid or viscous substances in amounts which cause obstructions to the flow in sewers or interference with the proper operation of the treatment works,

d. Wastewaters at a flow rate and/or pollutant discharge rate which is excessive over relatively short time periods so as to cause a loss of treatment efficiency.

e. New wastes or increased volumes or quantities of wastes from major contributing industries in such volumes or quantities as to overload the treatment works or cause a loss of treatment efficiency.

26. Definition Terms

(i) For those terms used in Part I and II which are defined in Section 147.015, Wisconsin Statutes, the meanings of that Section shall apply.

(ii) As used in Daily Effluent Limitations, Part II:

(1) "Average" means the arithmetic mean of daily monitoring test results obtained during a calendar month for the given parameter; that is the total of such daily results, in pounds per day, milligrams per liter, or other appropriate unit divided by the number of days for which results are totaled. For example, if a facility operates or discharges and monitors 30 days during a month the daily average is the sum of daily values in pounds per day, milligrams per liter, or other appropriate unit divided by 30 for each parameter, but if one day's result is missing for any parameter the divisor in that case is 29.

(2) "Maximum" means the highest daily monitoring test result, in pounds per day, milligrams per liter, or other appropriate unit during the calendar month for the given parameter.

(3) "Minimum" means the lowest daily monitoring test result, in the appropriate unit, during the calendar month for the given parameter.

(4) The "average" for fecal coliform bacteria shall be the geometric mean of the samples collected in a reported period.

SPECIAL CONDITIONS

A. Sanitary Sewer Crossovers (Gravity) and Electrically Operated Relief Pumps—Discharge Serial Number 001 through 089.

The City of Milwaukee is required to initiate a program leading to the elimination of the sanitary sewer crossovers (gravity) and the electrically operated relief pumps at discharge points 001 through 089 (as identified below) to assure attainment of all applicable Water Quality Standards.

1. On or before December 31, 1975, the City shall submit to the Wisconsin Department of Natural Resources a plan for the elimination of discharge points 001 through 089. Such plan shall include alternative engineering solutions for the elimination of each discharge point, a recommended solution for the elimination of each discharge point, an estimate of cost for the elimination of each discharge point and a time schedule for the elimination of each discharge point. If it is determined by the Department that the plan is incomplete or inadequate, the plan may be returned to the City with the reasons therefore, following which the plan shall be modified by the City and resubmitted within 60 days. After acceptance by the Department of an adequate plan, this permit may be modified to incorporate the specific provisions and time schedules contained in the plan.

2. On or before March 31, 1975, the City shall submit to the Department a listing of discharge 001 through 089 which identifies which of the discharges take place under normal dry weather conditions and which take place only under wet weather conditions.

3. On or before June 30, 1975, the City shall complete "Attachment A" for each discharge 001 through 089, and submit the completed forms to the Department.

4. On or before September 30, 1976, the City shall prepare and submit to the Department an Infiltration/Inflow Analysis for the separate sanitary sewer system. The Analysis shall be based on the Federal Guidelines for Sewer System Evaluation, March, 1974, EPA 520/9-74-018. On or before March 31, 1975, the City shall submit to the Department a plan of study for conducting the Infiltration/Inflow Analysis; such plan of study to include a time schedule for the accomplishment of specific tasks. Based on the results of the Analysis, a more detailed sewer system evaluation survey may be required.

5. On or before March 31, 1975, the City shall identify to the Department 10 discharge points (chosen from 001 through 089) which are considered by the City to have the most significant impact on water quality. Following concurrence by the Department, the City shall by December 31, 1975, install equipment to continuously measure all flows discharged from the 10 selected discharges and shall install equipment to adequately sample the flow discharged. Beginning on March 31, 1976, and every three months thereafter until the discharges are eliminated, the City shall submit a report to the Department containing data on the date of discharge, volume of discharge and sample analysis for each discharge. Each sample shall be analyzed for BOD, Suspended Solids, pH, Fecal Coliform and any other parameter that the Department may require.

Serial Number	Location
001	N. 25th Street and W. Hope Avenue
002	N. 30th Street and W. Hope Avenue
003	N. 31st Street (Ext.) and W. Hope Avenue (Ext.)
004	N. 31st Street and W. Villard Avenue (12" diameter crossover)
005	N. 31st Street and W. Villard Avenue (8" diameter crossover)
006	N. 41st Street and W. Congress Street
007	N. 47th Street and W. Concordia Avenue
008	N. 47th Street and W. Congress Street
009	N. 49th Street and W. Concordia Avenue
010	N. 68th Street and W. Center Street
011	N. 20th Street at W. Fairmount Avenue
012	S. 3rd Street at W. Saveland Avenue
013	N. 76th Street, 200 feet north of Hadley Street
014	N. 79th Street and W. Locust Street
015	W. Capitol Drive (N/S) and N. 31st Street
016	W. Capitol Drive (S/S) and N. 31st Street
017	N. Sherman Boulevard and W. Fond du Lac Avenue
018	S. Whitnall Avenue and E. Howard Avenue
019	N. 36th Street between W. Carmen Avenue and W. Florist Avenue
020	E. Howard Avenue at S. Pine Avenue
021	W. Center Street at N. 86th Street
022	N. 35th Street, 40 feet north of W. Oriole Drive
023	S. 36th Street at W. Lakefield Drive
024	W. Center Street at N. 88th Street
025	W. Ruskin Street at S. 38th Street
026	W. Silver Spring Drive at N. 38th Street
027	W. Silver Spring Drive at N. 37th Street
028	W. Silver Spring Drive at N. 36th Street
029	W. Silver Spring Drive at N. 35th Street
030	W. Silver Spring Drive at N. 27th Street
031	N. 89th Street at W. Townsend Street

Serial Number	Location
032	N. 90th Street at W. Townsend Street
033	W. Dickinson Street and S. 62nd Street
034	W. Hope Avenue and N. 47th Street
035	W. Silver Spring Drive and N. 39th Street
036	W. Silver Spring Drive and N. 41st Street
037	W. Stevenson Street and N. 71st Street
038	W. Mt. Vernon Avenue and N. 69th Street
039	W. Morgan Avenue at S. 57th Street
040	W. Hadley Street at N. 80th Street
041	W. Mt. Vernon Avenue at 75 feet east of N. 91st Street
042	N. 41st Street and Congress Street
043	N. 66th Street 1/2 block between W. Congress Street and W. Ruby Avenue
044	N. 94th Street and W. Townsend Street
045	N. 95th Street and W. Metcalf Pl.
046	E. Armour Avenue 69 feet west of S. Austin Street
047	N. 89th Street and W. Center Street
048	N. 87th Street and W. Center Street
049	N. 44th Street 285 feet south of W. Burleigh Street
050	N. 53rd Street at W. Glendale Avenue
051	N. 53rd Street at W. Courtland Avenue (Ext.)
052	S. Austin Street at W. Dakota Street
053	N. 27th Street 404 feet south of W. Hope Avenue
054	E. Ohio Street and S. Quincy Avenue
055	W. Lawn Avenue and N. Milwaukee River Parkway
056	N. Milwaukee River Parkway and vacated W. Wilson Drive
057	W. Fairmount Avenue and N. 19th Place
058	W. Fairmount Avenue and N. Green Bay Road
059	S. 43rd Street and W. Morgan Avenue
060	N. 20th Street at W. Hampton Avenue (North Side)
061	N. 20th Street at W. Hampton Avenue (South Side)
062	N. 19th Place at W. Fairmount Avenue
063	N. 49th Street at W. Luscher Avenue

Serial Number	Location
064	N. 60th Street at W. Custer Avenue
065	5384 N. 60th Street
066	N. 61st Street at W. Lawn Avenue
067	5373 N. 60th Street
068	5344 N. 60th Street
069	N. 63rd Street at W. Fairmount Avenue
070	N. 64th Street at W. Stark Street
071	5030 N. 55th Street
072	N. 66th Street at W. Ruby Avenue
073	N. 96th Street at W. Auer Avenue
074	N. 99th Street at W. Concordia Avenue
075	S. 46th Street at W. Cleveland Avenue
076	Mid-block W. Lincoln Avenue between S. 36th Street and S. 37th Street.
077	N. Milwaukee River Parkway at W. Lawn Avenue
078	N. Milwaukee River Parkway, north of W. Lawn Avenue
079	N. 58th Street at W. Sheridan Avenue
080	S. 72nd Street at W. Honey Creek Parkway
081	S. 77th Street at W. Oklahoma Avenue
082	3253 S. 57th Street
083	S. 54th Street at W. Midland Drive
084	92nd Street at W. Howard Avenue
085	S. Howell Avenue at W. Ramsey Avenue
086	S. Howell Avenue at E. Edgerton Avenue
087	S. Burrell Street at E. Van Norman Avenue
088	W. Monrovia Avenue at W. Crossfield Avenue
089	S. 94th Street at W. Howard Avenue

B. Combined Sewer Crossovers and Overflows—Discharge Serial Number 090 through 213.

The City of Milwaukee is required to initiate a program leading to the attainment of control of overflows from the City's combined sewer system at discharge points 090 through 213 (as identified below), to assure attainment of all applicable Water Quality Standards.

1. The City is to cooperate with and assist the Sewerage Commission of the City of Milwaukee in the conduct and completion of the facilities planning as provided in Treatment Works Grant C550772-01. The facilities planning elements include a feasibility study, cost-effectiveness analysis and environmental assessment for elimination or control of the discharges from the combined sewers.

2. Beginning on March 31, 1975 and continuing every three months thereafter until completion of the facilities planning, the City shall submit progress reports to the Department of Natural Resources, WPDES Permit Section.

3. On or before March 31, 1975, the City shall submit to the Department a listing of discharges 090 through 213 which identifies which of the discharges take place under normal dry weather conditions and which taken [*sic*] place only under wet weather conditions.

4. On or before June 30, 1975, the City shall complete "Attachment A" for each discharge 090 through 213, and submit the completed forms to the Department.

5. On or before March 31, 1975, the City shall identify to the Department 15 discharge points (chosen from 090 through 213) which are considered by the City to have the most significant impact on water quality. Following concurrence by the Department, the City shall by

Department [*sic*] 31, 1975, install equipment to continuously measure all flows discharged from the 15 selected discharges and shall install equipment to adequately sample the flow discharged. Beginning March 31, 1976, and every three months thereafter until the discharges are eliminated or controlled, the City shall submit a report to the Department containing data on the date of discharge, volume of discharge and sample analysis for each discharge. Each sample shall be analyzed for BOD, Suspended Solids, pH, Fecal Coliform and any other parameter that the Department may require. In the event the facilities planning referred to in (a) above identifies more than 15 discharges which will be monitored, the City shall submit, on a quarterly basis, information on all discharges monitored beginning at the close of the quarter during which the monitoring is initiated.

Combined Sewer Crossovers—Discharge Serial Numbers 090 through 100 inclusive:

Serial Number	Location
090	N. 26th Street and W. Vienna Avenue
091	N. 37th Street 145 feet north of W. Mt. Vernon Avenue
092	N. 38th Street and W. Mt. Vernon Avenue
093	N. 46th Street and W. State Street
094	E. Meinecke Avenue and N. Gordon Place
095	W. Hilda Place and S. 38th Street
096	N. Sherman Boulevard at W. Burleigh Street
097	E. Lincoln Avenue at S. Burrell Street
098	E. Lincoln Avenue 150 feet west of S. Greeley Street
099	E. Lincoln Avenue 450 feet west of S. Greeley Street
100	N. 37th Street 11 feet north of W. Mt. Vernon Avenue

Combined Sewer Overflows to the Milwaukee River—Discharge Serial Numbers 101 through 164 inclusive:

Serial Number	Location
101	E. Capitol Drive
102	E. Keefe Avenue
103	E. Edgewood Avenue
104	E. Auer Avenue (36″)
105	E. Auer Avenue (84″)
106	E. Hampshire Street
107	E. Burleigh Street
108	E. Chambers Street
109	E. Locust Street
110	E. Park Place
111	E. Bradford Avenue
112	E. Boylston Street
113	E. Tunnel Place
114	N. Pulaski Street
115	N. Humboldt Avenue
116	Point 350 feet west of N. Humboldt Avenue
117	Point 800 feet west of N. Humboldt Avenue
118	N. Marshall Street
119	N. Holton Street
120	E. Brady Street
121	North of E. Walnut Street (96″)
122	E. Walnut Street
123	E. Pleasant Street
124	North of Cherry Street
125	W. Cherry Street (90″)
126	E. Lyon Street
127	E. Ogden Avenue
128	W. McKinley Avenue
129	W. Juneau Avenue
130	E. Juneau Avenue
131	W. Highland Avenue

Serial Number	Location
132	E. Highland Avenue
133	W. State Street
134	E. State Street
135	W. Kilbourn Avenue (36″)
136	W. Kilbourn Avenue (4′-6″ × 6′)
137	E. Kilbourn Avenue
138	North of W. Wells Street (30″)
139	W. Wells Street (48″)
140	E. Wells Street
141	North of W. Wisconsin Avenue (18″ × 30″)
142	W. Wisconsin Avenue (24″)
143	E. Wisconsin Avenue
144	North of W. Michigan Street (30″)
145	W. Michigan Street (54″)
146	E. Michigan Street
147	North of W. Clybourn Street (24″ × 26″)
148	W. Clybourn Street (48″)
149	E. Clybourn Street
150	North of W. St. Paul Avenue (30″)
151	W. St. Paul Avenue
152	E. St. Paul Avenue
153	E. Buffalo Street
154	E. Chicago Street
155	S. 1st Street
156	S. Water Street
157	E. Pillsburgh Avenue
158	N. Broadway
159	South of E. Oregon Street
160	E. Florida Street
161	E. Polk Street
162	E. Harbor Place
163	E. Bruce Street
164	North of W. Juneau Avenue (36″)

Combined Sewer Overflows to the Kinnickinnic River—Discharge Serial Numbers 165 through 186 inclusive:

Serial Number	Location
165	E. National Avenue
166	E. Walker Street
167	South of E. Walker Street
168	South of E. Washington Street
169	E. Greenfield Avenue
170	S. Kinnickinnic Avenue (30″)
171	S. Kinnickinnic Avenue (60″)
172	S. 1st Street N. (42″)
173	S. 1st Street S. (42″)
174	S. 2nd Street
175	W. Rogers Street
176	W. Becher Street (12′ × 6′)
177	W. Becher Street (96″)
178	W. Lincoln Avenue (30″)
179	W. Lincoln Avenue (48″)
180	S. Chase Avenue (18″)
181	S. Chase Avenue (10′ × 5′)
182	W. Cleveland Avenue (72″)
183	W. Cleveland Avenue (84″)
184	S. 8th Street
185	S. 14th Street
186	S. 27th Street

Combined Sewer Overflows to the Menomonee River—Discharge Serial Numbers 187 through 203 inclusive:

Serial Number	Location
187	S. 2nd Street
188	West of N. 8th Street
189	S. Muskego Avenue (30″)
190	S. Muskego Avenue (54″)
191	N. 15th Street (D61-7′ × 4′)

Serial Number	Location
192	N. 15th Street (7′ × 4′)
193	N. 17th Street
194	N. 25th Street
195	N. 26th Street
196	S. 27th Street (48″)
197	S. 27th Street N. (48″)
198	S. 35th Street
199	W. Wisconsin Avenue (24″F)
200	W. Wisconsin Avenue (24″)
201	N. 43rd Street
202	N. 45th Street
203	N. Hawley Road

Combined Sewer Overflows to the South Menomonee Canal-Branch of Menomonee River—Discharge Serial Numbers 204 and 205:

Serial Number	Location
204	S. 4th Street
205	S. 6th Street

Combined Sewer Overflows to Burnham's Canal-Branch of Menominee River—Discharge Serial Numbers 206 through 211 inclusive:

Serial Number	Location
206	S. 9th Street (36″)
207	S. 9th Street (78″)
208	S. 11th Street
209	S. 13th Street (36″)
210	S. 13th Street (60″)
211	S. Muskego Avenue

Combined Sewer Overflows to Lake Michigan—Discharge Serial Numbers 212 and 213:

Serial Number	Location
212	E. Bay Street
213	E. Russell Avenue

"Attachment A"

1. Discharge Serial Number: _____

2. Discharge Location: _____

3. Name of Receiving Water: _____

4. Occurrence (check when discharge occurs)

Wet Weather _____Yes, _____No
Dry Weather _____Yes, _____No

5. Frequency (Give the actual or approximate number of incidents per year)

Wet Weather _____ times per year
Dry Weather _____ times per year

6. Duration (Give the average duration per incident in hours)

Wet Weather _____ hours
Dry Weather _____ hours

7. Volume (Give the average volume per incident in thousand gallons)

Wet Weather _____ thousand gallons per incident
Dry Weather _____ thousand gallons per incident

8. Reason (Give brief reason or justification for discharge)

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES
Anthony S. Earl
Secretary
BOX 7921
MADISON, WISCONSIN 53707

CERTIFIED MAIL **IN REPLY REFER TO: 3420**
RETURN RECEIPT REQUESTED **WI-0024767-2**

Mr. Robert J. Borchardt
Chief Engineer & General Manager
Sewage Commission of the City of Milwaukee
Jones Island Wastewater Treatment Plant
P.O. Box 2079
Milwaukee, Wisconsin 53201

RE: WPDES Permit No. WI-0024767-2

Dear Mr. Borchardt:

Your application WI-0024767-2 for a Wisconsin Pollutant Discharge Elimination System (WPDES) Permit has been processed in accordance with Sections 147.02 and 147.03(3), Wisconsin Statutes.

The enclosed WPDES permit covers the discharges from the facility located at 700 East Jones Street, Milwaukee, Wisconsin into Lake Michigan and tributary streams in Milwaukee County. All discharges from this facility and actions or reports relating thereto shall be in accordance with the terms and conditions of this permit.

The WPDES permit program has been approved by the Administrator of the U.S. Environmental Protection Agency pursuant to Section 402(b) of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. Section 1342(b)). The terms and conditions of this permit are accordingly subject to enforcement under Sections 147.21 and 147.29, Wisconsin Statutes and Section 309 of the Federal Act (33 U.S.C. Section 1319).

The Judgment entered on May 25, 1977 in the matter of *The Sewerage Commission of the City of Milwaukee, et al* vs. *Wisconsin Department of Natural Resources (*Case No. 152-342, Dane County Circuit Court, State of Wisconsin), and the Judgment entered on November 15, 1977 in the matter of *People of Illinois* vs. *City of Milwaukee, et al* (Case No. 72-C-1253; U.S.D.C., N. Dt. of Ill.) impose legal obligations and requirements on the permittee which are independent of the terms of this permit and in no way affected by the issuance of this permit.

Thomas Kroehn
Administrator
Division of Environmental Standards

Date Feb. 28, 1978
Enclosures
Permit

cc: U.S. Environmental Protection Agency
ATTN: Permits Branch
Southeast District

PERMIT TO DISCHARGE UNDER THE WISCONSIN POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of Chapter 147, Wisconsin Statutes, SEWAGE COMMISSION OF THE CITY OF MILWAUKEE JONES ISLAND is permitted to discharge from a wastewater treatment facility located at

700 EAST JONES STREET
MILWAUKEE, WISCONSIN 53201

to LAKE MICHIGAN AND TRIBUTARY STREAMS IN MILWAUKEE COUNTY in accordance with the effluent limitations, monitoring requirements and other conditions set forth in this permit.

All discharges authorized herein shall be consistent with the terms and conditions of this permit. The discharge of any pollutant identified in this permit more frequently than or at a level in excess of that authorized shall constitute a violation of the permit.

This permit shall become effective on the date of signature.

This permit to discharge shall expire at midnight, June 30, 1982.

The permittee shall not discharge after the date of expiration. If the permittee wishes to continue to discharge after this expiration date an application shall be filed for reissuance of this permit in accordance with the requirements of Chapter NR 200, Wisconsin Administrative Code, at least 180 days prior to this expiration date.

State of Wisconsin Department of Natural Resources
For the Secretary

By

Thomas A. Kroehn
Administrator
Division of Environmental Standards

Dated this 28th day of Feb., 1978

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A) Bypass an Overflow Report	July 15, 1978
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C) NR 101 Industrial Reports	December 31, 1978
D) Industrial Pretreatment Report	June 30, 1978

Part III —Schedule of Compliance
None needed
Part IV —Special Conditions
Part V —General Conditions

PART I. MONITORING REQUIREMENTS

1. Reporting

a. Monitoring results obtained during the previous month shall be summarized and reported on a WPDES Self-Monitoring Report Form, #3200-28, postmarked no later than the 15th day of the month following the completed reporting period. The first report for the month of March, 1978 is due on or before April 15, 1978. The white and green copies of 3200-28 shall be submitted to:

Wisconsin Department of Natural Resources
Environmental Protection Section—Permits
Southeast District Headquarters
Box 13248
Milwaukee, Wisconsin 53226

The pink report copy is to be retained by the permittee.

b. Monitoring reports shall be signed by a principal executive officer, a ranking elected official, or other duly authorized representative.

c. If the permittee monitors any pollutant more frequently than required by this permit, the results of such monitoring shall be included on form #3200-28.

d. Sampling and laboratory testing procedures shall be performed in accordance with Chapters NR 218 and NR 219 of the Wisconsin Administrative Code.

A. INFLUENT MONITORING REQUIREMENTS

During the period beginning on the effective date of this permit and lasting until June 30, 1982 the permittee is required to perform the following monitoring.

Samples taken in compliance with the monitoring requirements specified below shall be taken at a point following the coarse screens and preceding the grit chambers.

Parameter	Units	Monitoring Requirements: Sample Frequency	Monitoring Requirements: Sample Type
Flow[1]	MGD	Continuous	
BOD_5-day	mg/l	Daily	24-hour composite
Suspended Solids	mg/l	Daily	24-hour composite
Phosphorus	mg/l	Daily	24-hour composite

[1] Flow measurement of the wastewater volume received at the treatment plant, including any bypassed flow, shall be monitored continuously.

B. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

During the period beginning on the effective date of this permit and lasting until June 30, 1982 the permittee is authorized to discharge from outfall serial number 001.

Samples taken in compliance with the monitoring requirements specified below shall be taken at the combined outfall following the disinfection process and immediately prior to discharge to Lake Michigan.

Effluent Parameters	Effluent Limitations: Quantity-kg/day (lbs/day) Other Limitations (Specify Units): Average[1]	Maximum	Minimum	Average	Maximum	Monitoring Requirements: Sample Frequency	Sample Type
Flow-M^3/Day (MGD)	—	—	—	—	—	Continuous	
BOD_5 (monthly)	22,670(50,040)	—	—	30 mg/l	—	Daily	24-hour composite
BOD_5 (weekly)	34,000(75,060)	—	—	45 mg/l	—	Daily	24-hour composite
Suspended Solids (monthly)	22,670(50,040)	—	—	30 mg/l	—	Daily	24-hour composite
Suspended Solids (weekly)	34,000(75,060)	—	—	45 mg/l	—	Daily	24-hour composite
pH	—	—	6.0	—	9.0	Daily	Grab
Residual Chlorine (daily)[2]	—	—	—	—	mg/l	Daily	Grab
Fecal Coliform (monthly)	—	—	—	200/100 ml	—	2 × Weekly	Grab
Fecal Coliform (weekly)	—	—	—	400/100 ml	—	2 × Weekly	Grab
Total Phosphorus (monthly)	755(1,668)	—	—	1.0 ml	—	Daily	24-hour composite
Free Available Chlorine (daily)	—	—	—	—	—	2 × Weekly	Grab

[1] Based on a design flow of 200 MGD.

[2] At such time as effluent limitations for chlorine residual are finally promulgated in the Wisconsin Administrative Code, this permit may be modified to incorporate either the final limitations or interim limitations and a compliance schedule to achieve the final limitations.

All reports required in this section shall be signed by a principal executive officer, a ranking elected official, or other duly authorized representative. These signed reports shall be submitted to:

Wisconsin Department of Natural Resources
WPDES Permits—Municipal Wastewater Section
P. O. Box 7921
Madison, Wisconsin 53707

Overflow Points in the Collection System

1. Limitations on Discharge:

The following overflow points are known to exist in the sewage collection system of the permittee, tributary to the Jones Island Sewage Treatment Plant.

Discharge Serial Number	Location
003	Easement 500 feet S. of Milwaukee-Ozaukee County Line and 200 feet W. of Waverly Road
004	8506 N. Manor Lane
005	W. Roosevelt Drive and W. Seranton Place
006	N. 35th Street and West Congress Street
007	N. 31st Street and W. Fairmount Avenue
008	N. 31st Street Ext'd N. Side of Lincoln Creek
009	N. 27th Street and W. Silver Spring Drive
010	W. Canal Street at S. 8th Street
011	N. 13th Street N. of W. Clybourn Street
012	W. Hampton Avenue and N. Green Bay Road, West
013	W. Hampton Avenue and N. Green Bay Road, East
014	W. Hampton Avenue at N. Lydell Avenue
015	N. Marshall Street and the Milwaukee River
016	W. Vliet Street Ext'd, East of N. 3rd Street
017	N. Van Buren Street at E. Brady Street
018	In S. Water Street at E. Bruce Street
019	S. 1st Street at the Kinnickinnic River
021	W. Layton Avenue at S. 1st Street
023	W. Villard Avenue at N. 27th Street
024	W. Hampton Avenue at N. 32nd Street
026	W. Roosevelt Drive at N. 35th Street
029	W. State Street at N. 46th Street
030	N. Richards Street at E. Congress Street Ext'd

Discharge Serial Number	Location
031	N. Range Line Road at N. Side of the Milwaukee River
032	S. Kinnickinnic Avenue at E. St. Francis Avenue
044	N. Lydell Avenue and W. Lancaster Avenue
045	N. Lydell Avenue at W. Montclair Avenue
046	N. Lake Drive at E. Fairmont Ext'd
048	E. Erie Street and Milwaukee River, East Line
049	E. Erie Street and Milwaukee River, West Line
050	S. Water Street and East Bruce Street
051	Point 350 feet west of N. Humboldt Avenue
052	Point 800 feet west of N. Humboldt Avenue

These overflow points are either to be eliminated effective July 1, 1977, or are required to comply with the following effluent limitations, effective July 1, 1977, and continuing for the term of the permit.

BOD_5	30 mg/l
Suspended Solids	30 mg/l
pH	6 to 9
Fecal Coliform	200/100 ml
Phosphorus	1.0 mg/l

2. Monitoring:

The permittee shall select seven overflow points for installation of flow measurement and sampling equipment. Should a discharge occur from these selected overflow points, the permittee shall continuously measure and sample all flow events.

The permittee shall submit quarterly reports to the Department containing data on the date of discharge, volume of discharge, and sample analysis for each discharge. Each sample shall be analyzed for BOD_5, suspended solids, pH, fecal coliform and any other parameter that the Department may require. The quarterly report shall be due by the 15th day of the month following the calendar quarter. The first report is duly July 15, 1978 for the quarter of April-May-June, 1978.

SLUDGE MANAGEMENT PLAN

1. A sludge management plan shall be developed for the disposal of solids, sludges or other materials resulting from treatment of wastewater. The permittee shall submit the initial sludge management plan by June 30, 1978. If the Department determines that the plan is acceptable it will issue a letter of approval to the permittee.

If the plan as submitted is determined by the Department to be unacceptable, it shall be returned to the permittee for revision and resubmittal.

The permittee shall be responsible for the implementation of the approved sludge management activities. The permittee may at any time amend the sludge management plan, subject to the approval of the Department. The amended plan may not be put into effect until it has received approval from the Department.

The Department shall evaluate the management plans on the basis of recommendations in Wisconsin Department of Natural Resources (DNR) Technical Bulletin #88 and any other pertinent information deemed appropriate to the review of sludge management plans.

The sludge management plan shall be submitted on reporting forms to be provided by this Department. Following review of the management plan, the Department shall issue a letter of approval with any necessary conditions. The letter of approval will establish a means by which the permittee will periodically report to the Department on the sludge disposal practices in the time period between reports. It will also indicate the frequency of sludge analysis required and the parameters to be analyzed in the next reporting period. In general municipalities over 1 MGD will be required to report on a quarterly basis, while municipalities under 1 MGD will be required to report annually. This may be modified depending on the type of waste treated at the municipal facility.

2. The management plan shall be a comprehensive report

which incorporates the following items in sufficient detail to allow evaluation:

a. Storage facilities, when normal disposal sites are unavailable or inaccessible, including:

1) Type of facility

2) Location of facility

3) Capacity of facility

4) Property interest or contractual agreement allowing use of facility, and

5) Any other planned use of the storage facility

b. A description of sludge characteristics, including:

1) Type of wastewater treatment provided that results in sludge generation

2) Type of sludge treatment prior to disposal

3) The quantity of sludge generated for disposal on a daily, monthly and annual basis

4) Physical and chemical characteristics of the sludge including:

Parameter	Abbreviation
*Percent Total Solids	
Total Nitrogen	N
Ammonium Nitrogen	$NH_4 \pm N$
* pH	--
Total Phosphorous	P
Total Potassium	K
Arsenic	As
Cadmium	Cd

Parameter	Abbreviation
Copper	Cu
Chromium	Cr
Lead	Pb
Mercury	Hg
Nickel	Ni
Zinc	Zn

* All parameters other than Percent Solids and pH shall be calculated on a dry weight basis.

c. The mode of sludge transportation, including:

1) The hauler's name and mailing address (license number if a certified hauler).

2) The method of transportation, such as pipe line, barge, truck, train and others.

3) If hauled by a vehicle the following information is needed:

a) Type of vehicle

b) Capacity of vehicle

c) The gross weight of vehicle

d. Information about the ultimate disposal site.

1) If sludge will be disposed of at one or more licensed landfill sites, the following information shall be provided:

a) The amount of sludge to be disposed of at each site

b) The site names and license numbers

c) Contractual agreement

d) An indication of approval from the Solid Waste Management Section of this Department

2) If sludge will be disposed of on land areas (other than at licensed landfill sites), the following information shall be provided for each disposal site.

a) A soil test shall be completed for each disposal site for each year that sludge is to be applied.

b) The location of the site shall be indicated on a soils map. Either a plat map or U.S.G.S. topographic map shall also be provided.

c) A description of the crops to be grown or the dominant vegetation on the disposal site.

d) A discussion of adjacent land use, drainage and land features associated with the disposal site.

e) The ownership of the site

f) A description of the land use agreement

g) A description of methods to be used to spread and incorporate the sludge into the soil.

h) The applicator of the sludge, such as the farmer, land owner, municipality, contractor or others.

i) An estimate of the total acreage to which sludge will be applied.

j) The maximum rate of application (tons/acre/year based on nitrogen or cadmium, whichever is lower) and the loading limit (tons/acre based on metal equivalents or cadmium whichever is lower). If recommended application rates or loading limits are exceeded, comprehensive monitoring may be required.

k) The anticipated use of the site for the 12 months immediately following sludge application.

3) The frequency of sludge disposal and the months in which it will occur.

3. Beginning with submission of the plan, records shall be maintained for each site, (other than at a licensed landfill site), including:

a. The amount of sludge applied (tons/acre).

b. The amount of nitrogen applied per year (lbs./acre).

c. The amount of cadmium applied per year (lbs./acre).

d. The total amount of metal equivalents applied (lbs./acre).

e. The total amount of cadmium applied (lbs./acre).

f. The location of the site on a plat map and the number of acres to which the sludge was applied.

g. The site monitoring results.

h. A description of any adverse environmental, health or social effects that occurred due to sludge disposal.

i. A report of any action not in conformance with the approved plan.

Industrial Discharger Reports

1. Significant Industrial Dischargers

By December 31 of each year, the permittee shall provide this Department with a listing of all the Significant Industrial Dischargers to the treatment system. The first report is due December 31, 1978.

* Note: A Significant Industrial Discharger is defined to be any source which contributes 10,000 gallons or more of process and/or cooling water on any day to the treatment system.

This Department will require each Significant Industrial Discharger to file an annual report as prescribed in Chapter NR 101, Wisconsin Administrative Code. Each discharger must file a report copy with both this Department and the permittee.

2. Pretreatment

The permittee shall submit a report to the WPDES Permit Section, detailing the pretreatment requirements imposed on each industrial user, by June 30, 1978. Annual reports are required each year on June 30. In the event the permittee imposes different pretreatment requirements from those listed in the annual report during the period between report due dates, this Department shall be immediately advised.

PART IV. SPECIAL CONDITIONS

1. Noncompliance Notification

If for any reason the permittee does not comply with or will be unable to comply with any condition specified in this permit or should any unusual or extraordinary discharge of wastes occur from the facilities permitted herein, the permittee shall within five days of noncompliance occurrence notify the Department of Natural Resources, Compliance Section, Box 7921, Madison, Wisconsin 53707, providing the following information:

a. Cause for noncompliance.

b. Expected duration of noncompliance period.

c. Steps taken by permittee to regain compliance with permit conditions.

d. Steps taken to prevent recurrence of the condition of noncompliance.

2. Change in Discharge

The permittee shall notify this Department in advance of:

a. Any facility modification, addition and/or expansion that increases the plant capacity.

b. Any anticipated change in the facility discharge, including any new or changed significant industrial discharges or any significant changes in the quantity or quality of existing industrial discharges as required under Section 147.14, Wisconsin Statutes.

c. Any maintenance of the treatment facility which could result in degradation of effluent quality.

Where necessary, the permit will be modified or reissued to reflect changes in discharge, including any necessary effluent limitations for any pollutants not identified or limited herein.

In no case are any new connections, operational changes, increased flows, or significant changes in influent quality permitted that will cause violation of the effluent limits specified herein.

3. Change of Owner

In the event of transfer of control of operation of a wastewater treatment facility, the prospective owner must file a Statement of Acceptance with this Department. This "Statement" shall indicate that the new owner accepts the terms, conditions and liabilities of the present permit and desires that the existing permit be transferred. At this time the new owner shall also state whether there will be any changes in operation due to transfer of ownership which will cause a change in the discharge.**4. Permit Modification**

After notice and opportunity for a hearing as provided in Section 147.03, Wisconsin Statutes, this permit may be modified, suspended, or revoked in whole or in part during its term for cause including but not limited to, the following:

a. Violation of any terms or conditions of this permit.

b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts.

c. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

PART V. GENERAL CONDITIONS

1. Facility Operation and Quality Control

All waste collection, control, treatment and disposal facilities shall be operated in a manner consistent with the following:

a. The municipal wastewater treatment facility must be under the supervision of a state certified operator as required by Chapter 114 of the Wisconsin Administrative Code.

b. At all times, all facilities shall be operated as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants.

2. Adverse Impact

The permittee shall take all reasonable steps to minimize any adverse impact on waters of the State resulting from noncompliance with any effluent limitations specified in this permit, including such special or additional monitoring as may be required by the Department or may be necessary to determine the nature and impact of the noncomplying discharge.

3. Right of Entry

The permittee shall allow authorized representatives of the Department of Natural Resources, and the Administrator of the United States Environmental Protection Agency or his authorized representatives, upon the presentation of credentials:

a. To enter upon the permittee's premises where an effluent source is located or in which any records are required to be kept under the terms and conditions of this permit; and

b. At reasonable times to have access to and copy any records required to be kept under the terms and conditions

of this permit; to inspect any monitoring equipment or monitoring method required in this permit; and to sample any wastewaters.

4. Records Retention

All records and information resulting from the monitoring activities required by this permit, including all records of analyses performed and calibration and maintenance of instrumentation and recordings from continuous monitoring instrumentation shall be retained for a minimum of three (3) years, or longer if requested by the Department of Natural Resources.**5. Recording of Results**

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

a. The exact place, date, and time of sampling;

b. The dates the analyses were performed;

c. The person(s) who performed the analyses;

d. The analytical techniques or methods used; and

e. The results of all required analyses.

6. Civil and Criminal Liability

Except as provided in permit conditons on "Bypassing" (General Condition 17 & 18) and "Power Failures" (General Conditions 16), nothing in this permit shall be construed to relieve the permittee from civil or criminal penalities or liabilities under Section 147.21, Wisconsin Statutes, Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1321) or any other applicable state law or regulation.

7. Property Rights

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

8. Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

9. Construction of Onshore or Offshore Structures

This permit does not authorize or approve the construction of any onshore or offshore physical structure of facilities or the undertaking of any work in any navigable waters.

10. Confidential Information

Except for data determined to be confidential under Section 147.08(2)(c), Wisconsin Statutes, all monitoring reports required by this permit shall be available for public inspection at the headquarters of U.S. EPA Region V and the Department of Natural Resources.

11. False Statements and Data

Knowingly making any false statement on any report or other document required by this permit or knowingly rendering any monitoring device or method inaccurate, may result in the imposition of criminal penalities in accordance with the provisons of Section 147.21, Wisconsin Statutes.

12. Prohibited Wastes

Under no circumstances shall the introduction of wastes prohibited by NR 211.10, Wisconsin Administrative Code, be allowed into the waste treatment system. Prohibited wastes include those:

a. Which create a fire or explosion hazard in the treatment works,

b. Which will cause corrosive structural damage to the treatment works,

c. Solid or viscous substances in amounts which cause obstructions to the flow in sewers or interference with the proper operation of the treatment works,

d. Wastewaters at a flow rate or pollutant loading which are excessive over relatively short time periods so as to cause a loss of treatment efficiency, or

e. Changes in discharge volume or composition from contributing industries which overload the treatment works or cause a loss of treatment efficiency.

13. Pretreatment

The permittee shall require any industrial user of the permitted facility to meet pretreatment standards established pursuant to Section 147.07(2), Wisconsin Statutes, and to provide records, reports, and/or information related to compliance with such pretreatment standards.

14. Effluent Limit Modification

Pollutants attributable to Significant Industrial Dischargers may be present in the permittee's discharge. At such time as sufficient information becomes available to establish limitations for such pollutants, and after notice and opportunity for public

hearings as provided in Chapter NR3, Wisconsin Administrative Code, this permit may be revised to specify effluent limitations for any or all of such other pollutants.

15. Toxic Pollutants

Nothing in this permit shall be construed to authorize the discharge of any toxic pollutant or combination of pollutants in amounts or concentrations which exceed any applicable toxic effluent standard or prohibition promulgated under Section 147.07(1). If the promulgated toxic effluent standard or prohibition under Section 147.07(1) for a pollutant present in the discharge is more stringent than any pollutant limitation in this permit, this permit shall be modified or revised in accordance with the toxic effluent standard or prohibition.

16. Power Failures

The permittee is responsible for maintaining adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failure either by means of alternate power sources, standby generators or retention of inadequately treated effluent.

17. Unscheduled Bypassing

The unscheduled diversion or unscheduled bypass of any wastewater at the treatment works or collection system is prohibited except (i) an inadvertent bypass resulting from equipment damage or temporary power interruption, or (ii) an unavoidable bypass necessary to prevent loss of life or severe property damage, or (iii) a bypass of excessive storm drainage or runoff which would damage any facilities necessary for compliance with the effluent limitations and prohibitions of this permit. In the event of an unscheduled bypass, the permittee shall immediately notify the Department District Office by telephone of such occurrence. In addition, the permittee shall

notify the Department of Natural Resources, WPDES Permit Section in writing of each such unscheduled diversion or unscheduled bypass by letter within 72 hours.

18. Scheduled Bypassing

Bypassing of wastewater in order to accomplish maintenance or construction activities is prohibited unless specifically authorized in writing by the Department. Under certain conditions, it may be necessary to bypass wastewater in order to accomplish such maintenance or construction activities. When such conditions exist, the permittee shall request permission not less than 60 days prior to the proposed date of scheduled bypassing. The request shall include justification for the bypassing and an evaluation of alternatives for minimizing the volume of the bypass. Based upon the information presented, the Department may deny the request, approve it, or approve it with conditions. If the Department determines that the proposal is of significant public interest, the Department may circulate the request for public comment.

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Anthony S. Earl
Secretary

BOX 7921
MADISON, WISCONSIN 53707

CERTIFIED MAIL **IN REPLY REFER TO: 3420**
RETURN RECEIPT REQUESTED **WI-0024775-2**

Mr. Robert J. Borchardt
Chief Engineer & General Manager
Sewage Commission of the City of Milwaukee
South Shore Wastewater Treatment Plant
P. O. Box 2079
Milwaukee, Wisconsin 53201

RE: WPDES Permit No. WI-0024775-2

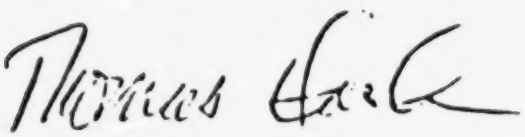
Dear Mr. Borchardt:

Your application WI-0024775-2 for a Wisconsin Pollutant Discharge Elimination System (WPDES) Permit has been processed in accordance with Sections 147.02 and 147.03(3), Wisconsin Statutes.

The enclosed WPDES permit covers the discharges from the facility located at 8500 South Fifth Avenue, Oak Creek, Wisconsin into Lake Michigan and tributary streams in Milwaukee County. All discharges from this facility and actions or reports relating thereto shall be in accordance with the terms and conditions of this permit.

The WPDES permit program has been approved by the Administrator of the U.S. Environmental Protection Agency pursuant to Section 402(b) of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. Section 1342(b)). The terms and conditions of this permit are accordingly subject to enforcement under Sections 147.21 and 147.29, Wisconsin Statutes and Section 309 of the Federal Act (33 U.S.C. Section 1319).

The Judgment entered on May 25, 1977 in the matter of *The Sewerage Commission of the City of Milwaukee, et al* vs. *Wisconsin Department of Natural Resources* (Case No. 152-342, Dane County Circuit Court, State of Wisconsin), and the Judgment entered on November 15, 1977 in the matter of *People of Illinois* vs. *City of Milwaukee, et al* (Case No. 72-C-1253; U.S.D.C. N. Dt. (Case No. 72-C-1253; U.S.D.C. N.Dt. of Ill.) of Ill.) impose legal obligations and requirements on the permittee which are independent of the terms of this permit and in no way affected by the issuance of this permit.



Thomas Kroehn
Administrator
Division of Environmental Standards

Dated February 28, 1978
Enclosures
Permit

cc: Environmental Protection Agency
ATTN: Permits Branch
Southeast District

PERMIT TO DISCHARGE UNDER THE WISCONSIN POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of Chapter 147, Wisconsin Statutes, SEWAGE COMMISSION OF THE CITY OF MILWAUKEE SOUTH SHORE is permitted to discharge from a wastewater treatment facility located at

8500 SOUTH FIFTH AVENUE
OAK CREEK, WISCONSIN

to LAKE MICHIGAN AND TRIBUTARY STREAMS IN MILWAUKEE COUNTY in accordance with the effluent limitations, monitoring requirements and other conditions set forth in this permit.

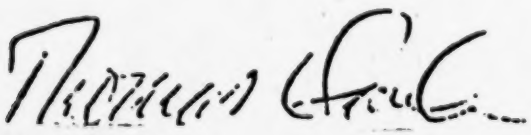
All discharges authorized herein shall be consistent with the terms and conditions of this permit. The discharge of any pollutant identified in this permit more frequently than or at a level in excess of that authorized shall constitute a violation of the permit.

This permit shall become effective on the date of signature.

This permit to discharge shall expire at midnight, June 30, 1982.

The permittee shall not discharge after the date of expiration. If the permittee wishes to continue to discharge after this expiration date an application shall be filed for reissuance of this permit in accordance with the requirements of Chapter NR 200, Wisconsin Administrative Code, at least 180 days prior to this expiration date.

State of Wisconsin Department of Natural Resources For the Secretary

By 

Thomas A. Kroehn
Administrator
Division of Environmental Standards

Dated this 28 day of Feb., 1978

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PART I. MONITORING REQUIREMENTS

1. Reporting

a. Monitoring results obtained during the previous month shall be summarized and reported on a WPDES Self-Monitoring Report Form, #3200-28, postmarked no later than the 15th day of the month following the completed reporting period. The first report for the month of March 1978 is due on or before April 15, 1978. The white and green copies of 3200-28 shall be submitted to:

Wisconsin Department of Natural Resources
Environmental Protection Section-Permits
Southeast District
P. O. Box 13248
Milwaukee, Wisconsin 53226

The pink report copy is to be retained by the permittee.

b. Monitoring reports shall be signed by a principal executive officer, a ranking elected official, or other duly authorized representative.

c. If the permittee monitors any pollutant more frequently than required by this permit, the results of such monitoring shall be included on form #3200-28.

d. Sampling and laboratory testing procedures shall be performed in accordance with Chapters NR 218 and NR 219 of the Wisconsin Administrative Code.

A. INFLUENT MONITORING REQUIREMENTS

During the period beginning on the effective date of this permit and lasting until June 30, 1982 the permittee is required to perform the following monitoring.

Samples taken in compliance with the monitoring requirements specified below shall be taken at a point upstream from the introduction of any recycled flows.

Parameter	Units	Monitoring Requirements: Sample Frequency	Monitoring Requirements: Sample Type
Flow[1]	MGD		Continuous
BOD_5-day	mg/1	Daily	24-hour composite
Suspended Solids	mg/1	Daily	24-hour composite
Phosphorus	mg/1	Daily	24-hour composite

[1] Flow measurement of the wastewater volume received at the treatment plant, including any bypassed flow, shall be monitored continuously.

B. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

During the period beginning on the effective date of this permit and lasting until June 30, 1982 the permittee is authorized to discharge from outfall serial number 002.

Samples taken in compliance with the monitoring requirements specified below shall be taken at a point following the disinfection process.

	Effluent Limitations: Quantity-kg/day (lbs/day)			Other Limitations (Specify Units)		Monitoring Requirements	
Effluent Parameters	Average 1	Maximum	Minimum	Average	Maximum	Sample Frequency	Sample Type
BOD_5 (monthly)	13,600(30,000)	–	–	30 mg/1	–	Daily	24-hour composite
BOD_5 (weekly)	20,400(45,000)	–	–	45 mg/1	–	Daily	24-hour composite
Suspended Solids (monthly)	13,600(30,000)	–	–	30 mg/1	–	Daily	24-hour composite
Suspended Solids (weekly)	20,400(45,000)	–	–	45 mg/1	–	Daily	24-hour composite
pH	–	–	6.0	–	9.0	Daily	Grab
Residual Chlorine (daily)[2]	–	–	–	–	mg/1	Daily	Grab
Fecal Coliform (monthly)	–	–	–	200/100 ml	–	2x Weekly	Grab
Fecal Coliform (weekly)	–	–	–	400/100 ml	–	2x Weekly	Grab
Total Phosphorus (monthly)	453(1000)	–	–	1.0 mg/1	–	Daily	24-hour composite
Free Available Chlorine (daily)	–	–	–	–	–	2x Weekly	Grab

[1] Based on a design flow of 120 MGD

[2] At such times as effluent limitations for chlorine residual are finally promulgated in the Wisconsin Administrative Code, this permit may be modified to incorporate either the final limitations or interim limitations and a compliance schedule to achieve the final limitations

PART II. SPECIAL REPORTS

All reports required in this section shall be signed by a principal executive officer, a ranking elected official, or other duly authorized representative. These signed reports shall be submitted to:

Wisconsin Department of Natural Resources
WPDES Permits—Municipal Wastewater Section
P.O. Box 7921
Madison, Wisconsin 53707

Overflow Points in the Collection System

1. Limitations on discharge.

The following overflow points are known to exist in the sewage collection system of the permittee, tributary to the South Shore sewage treatment plant.

Discharge Serial Number	Location
020	S. Howell Avenue at E. Grange Avenue
025	S. 35th Street at W. Manitoba Street
027	W. Hampton Avenue at N. 63rd Street Ext'd
028	S. 84th Street at W. Adler Street Ext'd
033	W. Fisher Parkway at N. 106th Street
034	Honey Creek Parkway at W. Portland Avenue
035	Honey Creek Parkway at W. Wisconsin Avenue
037	Menomonee River Parkway, 300 feet E. of N. 68th Street
038	N. Martha Washington Drive, 450 feet S. of W. Vleit Street
039	N. 62nd Street, 258 feet South of W. Martin Drive
040	N. 62nd Street and W. Martin Drive
041	S. 60th Street of S. side of the Kinnickinnic River
042	S. 79th Street Ext'd at W. Dickinson Street Ext'd
043	W. Lincoln Avenue at 565 Feet W. of S. 43rd Street
047	W. Oklahoma Avenue, 100 feet W. of S. 74th Street
054	S. 117th Street and W. Greenfield Avenue

These overflow points are either to be eliminated effective July 1, 1977 or are required to comply with the following effluent limitations, effective July 1, 1977, and continuing for the term of the permit.

BOD_5	—30 mg/l
Suspended Solids	—30 mg/l
pH	—6-9 s.u.
Fecal Coliform	—200/100 ml
Phosphorus	—1.0 mg/l

2. Monitoring

The permittee shall select three overflow points for installation of flow measurement and sampling equipment.

Should a discharge occur from these selected overflow points, the permittee shall continuously measure and sample all flow events. The permittee shall submit quarterly reports to the Department containing data on the date of discharge, volume of discharge, and sample analysis for each discharge.

Each sample shall be analyzed for BOD_5, suspended solids, pH, fecal coliform and any other parameter that the Department may require. The quarterly report shall be due by the 15th day of the month following the calendar quarter. The first report is due July 15, 1978 for the quarter April, May and June, 1978.

Emergency Bypass—Serial Number 053

The emergency bypass shall intercept wastewater at two points: 1) at the plant influent sewer preceding the existing coarse screens where the intercepted wastewater will be conveyed for discharge to Lake Michigan at a point approximately south of the existing main administration building, and 2) at the effluent side of the primary settling basins where the intercepted wastewater will be conveyed for discharge to Lake Michigan through the existing plant outfall sewer.

The emergency bypass shall only be used in accordance with the following conditions:

1. All wastewater up to and including an instantaneous peak rate of 320 MGD shall have a minimum of primary settling. Rates in excess of 240 MGD may be bypassed following the primary settling basins and preceding the aeration basins.

2. All wastewater exceeding an instantaneous peak rate of 320 MGD may be bypassed preceding the existing coarse screens.

3. Plans and specifications for the diversion structure and the conveyance piping shall be submitted to the Department of Natural Resources and approval obtained prior to the initiation of construction.

4. If a diversion structure is constructed preceding the existing coarse screens, such structure shall incorporate a means of coarse screening all diverted wastewater.

5. All wastewater diverted at the existing coarse screens of following primary clarification shall be disinfected to produce a fecal coliform count of less than 1000/100 ml utilizing the MPM analytical technique. Adequate detention time shall be provided to accomplish the required standard. The District shall submit, with the plans and specifications, justification for the proposed detention time.

6. The District shall notify all water treatment plants drawing raw water from Lake Michigan within a distance of 10 miles of the South Shore Treatment Plant of any impending bypass.

7. The District shall by June 30, 1978 submit to the Department a report on the adequacies of the existing plant outfall sewer to handle peak flow rates expected to be received at the plant. If the existing outfall sewer is determined to be inadequate, a plan for increasing its capacity shall be included in the report.

8. The wastewater bypassed at the existing coarse screens and/or following primary settling shall be monitored for volume, BOD_5, suspended solids, pH and fecal coliform. The sample of BOD_5 and suspended solids shall

be a composite sample over the period of bypass. The sample for pH and fecal coliform shall be a grab sample during the period of bypass.

9. All bypass events and monitoring thereof shall be reported to the Department on a monthly basis as an addendum to the monthly self-monitoring reports.

SLUDGE MANAGEMENT PLAN

1. A sludge management plan shall be developed for the disposal of solids, sludges or other materials resulting from treatment of wastewater. The permittee shall submit the initial sludge management plan by June 30, 1978. If the Department determines that the plan is acceptable it will issue a letter of approval to the permittee.

If the plan as submitted is determined by the Department to be unacceptable, it shall be returned to the permittee for revision and resubmittal.

The permittee shall be responsible for the implementation of the approved sludge management activities. The permittee may at any time amend the sludge management plan, subject to the approval of the Department. The amended plan may not be put into effect until it has received approval from the Department.

The Department shall evaluate the management plans on the basis of recommendations in Wisconsin Department of Natural Resources (DNR) Technical Bulletin #88 and any other pertinent information deemed appropriate to the review of sludge management plans.

The sludge management plan shall be submitted on reporting forms to be provided by this Department. Following review of the management plan, the Department shall issue a letter of approval with any necessary conditions. The letter of approval will establish a means by which the permittee will periodically report to the Department on the sludge disposal practices in the time period between reports. It will also indicate the frequency of sludge analysis required and the parameters to be analyzed in the next reporting period. In general municipalities over 1 MGD will be required to report on a quarterly basis, while municipalities under 1 MGD will be required to report annually. This may be modified depending on the type of waste treated at the municipal facility.

2. The management plan shall be a comprehensive report which incorporates the following items in sufficient detail to allow evaluation:

a. Storage facilities, when normal disposal sites are unavailable or inaccessible, including:

1) Type of facility

2) Location of facility

3) Capacity of facility

4) Property interest or contractual agreement allowing use of facility, and

5) Any other planned use of the storage facility

b. A description of sludge characteristics, including:

1) Type of wastewater treatment provided that results in sludge generation

2) Type of sludge treatment prior to disposal

3) The quantity of sludge generated for disposal on a daily, monthly and annual basis

4) Physical and chemical characteristics of the sludge including:

Parameter	Abbreviation
*Percent Total Solids	
Total Nitrogen	N
Ammonium Nitrogen	$NH_4 \pm N$
* pH	- -
Total Phosphorous	P
Total Potassium	K
Arsenic	As
Cadmium	Cd

Parameter	Abbreviation
Copper	Cu
Chromium	Cr
Lead	Pb
Mercury	Hg
Nickel	Ni
Zinc	Zn

* All parameters other than Percent Solids and pH shall be calculated on a dry weight basis.

c. The mode of sludge transportation, including:

1) The hauler's name and mailing address (license number if a certified hauler).

2) The method of transportation, such as pipe line, barge, truck, train and others.

3) If hauled by a vehicle the following information is needed:

a) Type of vehicle

b) Capacity of vehicle

c) The gross weight of vehicle

d. Information about the ultimate disposal site.

1) If sludge will be disposed of at one or more licensed landfill sites, the following information shall be provided:

a) The amount of sludge to be disposed of at each site

b) The site names and license numbers

c) Contractual agreements

d) An indication of approval from the Solid Waste Management Section of this Department

2) If sludge will be disposed of on land areas (other than at licensed landfill sites), the following information shall be provided for each diposal site.

a) A soil test shall be completed for each disposal site for each year that sludge is to be applied.

b) The location of the site shall be indicated on a soils map. Either a plat map or U.S.G.S. topographic map shall also be provided.

c) A description of the crops to be grown or the dominant vegetation on the disposal site.

d) A discussion of adjacent land use, drainage and land features associated with the disposal site.

e) The ownership of the site

f) A description of the land use agreement

g) A description of methods to be used to spread and incorporate the sludge into the soil.

h) The applicator of the sludge, such as the farmer, land owner, municipality, contractor or others.

i) An estimate of the total acreage to which sludge will be applied.

j) The maximum rate of application (tons/acre/year based on nitrogen or cadmium, whichever is lower) and the loading limit (tons/acre based on metal equivalents or cadium whichever is lower). If recommended application rates or loading limits are exceeded, comprehensive monitoring may be required.

k) The anticipated use of the site for the 12 months immediately following sludge application.

3) The frequency of sludge disposal and the months in which it will occur.

3. Beginning with submission of the plan, records shall be maintained for each site (other than at a licensed landfill site), including:

a. The amount of sludge applied (tons/acre).

b. The amount of nitrogen applied per year (lbs./ acre).

c. The amount of cadmium applied per year (lbs./ acre).

d. The total amount of metal equivalents applied (lbs./ acre).

e. The total amount of cadmium applied (lbs./acre).

f. The location of the site on a plat map and the number of acres to which the sludge was applied.

g. The site monitoring results.

h. A description of any adverse environmental, health or social effects that occurred due to sludge disposal.

i. A report of any action not in conformance with the approved plan.

Industrial Discharger Reports

1. Significant Industrial Dischargers

By December 31 of each year, the permittee shall provide this Department with a listing of all the Significant Industrial Dischargers to the treatment system. The first report is due December 31, 1978.

*Note: A Significant Industrial Discharger is defined to be any source which contributes 10,000 gallons or more of process and/or cooling water on any day to the treatment system.

This Department will require each Significant Industrial Discharger to file an annual report as prescribed in Chapter NR 101, Wisconsin Administrative Code. Each discharger must file a report copy with both this Department and the permittee.

2. Pretreatment

The permittee shall submit a report to the WPDES Permit Section, detailing the pretreatment requirements imposed on each industrial user, by June 30, 1978. Annual reports are required each year on June 30. In the event the permittee imposes different pretreatment requirements from those listed in the annual report during the period between report due dates, this Department shall be immediately advised.

PART III SCHEDULE OF COMPLIANCE

A. The South Shore Wastewater Treatment Facility will by January 31, 1978 begin accepting all wastewater flows from the Village of Butler. The Milwaukee Met will notify the Department of Natural Resources, within seven days of the date of entire flow diversion to its treatment facility.

PART IV. SPECIAL CONDITIONS

1. Noncompliance Notification

If for any reason the permittee does not comply with or will be unable to comply with any condition specified in this permit or should any unusual or extraordinary discharge of wastes occur from the facilities permitted herein, the permittee shall within five days of noncompliance occurrence notify the Department of Natural Resources, Compliance Section, Box 7921, Madison, Wisconsin 53707, providing the following information:

a. Cause for noncompliance.

b. Expected duration of noncompliance period.

c. Steps taken by permittee to regain compliance with permit conditions.

d. Steps taken to prevent recurrence of the condition of noncompliance.

2. Change in Discharge

The permittee shall notify this Department in advance of:

a. Any facility modification, addition and/or expansion that increases the plant capacity.

b. Any anticipated change in the facility discharge, including any new or changed significant industrial discharges or any significant changes in the quantity or quality of existing industrial discharges as required under Section 147.14, Wisconsin Statutes.

c. Any maintenance of the treatment facility which could result in degradation of effluent quality.

Where necessary, the permit will be modified or reissued to reflect changes in discharge, including any necessary limitations for any pollutants not identified or limited herein. In no case

are any new connections, operational changes, increased flows, or significant changes in influent quality permitted that will cause violation of the effluent limits specified herein.

3. Change of Owner

In the event of transfer of control of operation of a wastewater treatment facility, the prospective owner must file a Statement of Acceptance with this Department. This "Statement" shall indicate that the new owner accepts the terms, conditions and liabilities of the present permit and desires that the existing permit be transferred. At this time the new owner shall also state whether there will be any changes in operation due to transfer of ownership which will cause a change in the discharge.

4. Permit Modification

After notice and opportunity for a hearing as provided in Section 147.03, Wisconsin Statutes, this permit may be modified, suspended, or revoked in whole or in part during its term for cause including, but not limited to, the following:

a. Violation of any terms or conditions of this permit.

b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts.

c. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

PART V. GENERAL CONDITIONS

1. Facility Operation and Quality Control

All waste collection, control, treatment and disposal facilities shall be operated in a manner consistent with the following:

a. The municipal wastewater treatment facility must be under the supervision of a state certified operator as required by Chapter 114 of the Wisconsin Administration Code.

b. At all times, all facilities shall be operated as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants.

2. Adverse Impact

The permittee shall take all reasonable steps to minimize any adverse impact on waters of the state resulting from noncompliance with any effluent limitations specified in this permit, including such special or additional monitoring as may be required by the Department or may be necessary to determine the nature and impact of the noncomplying discharge.

3. Right of Entry

The permittee shall allow authorized representatives of the Department of Natural Resources, and the Administrator of the United States Environmental Protection Agency or his authorized representatives, upon the presentation of credentials:

a. To enter upon the permittee's premises where an effluent source is located or in which any records are required to be kept under the terms and conditions of this permit; and

b. At reasonable times to have access to and copy any records required to be kept under the terms and conditions

of this permit; to inspect any monitoring equipment or monitoring method required in this permit; and to sample any wastewaters.

4. Records Retention

All records and information resulting from the monitoring activities required by this permit, including all records of analyses performed and calibration and maintenance of instrumentation shall be retained for a minimum of three (3) years, or longer if requested by the Department of Natural Resources.

5. Recording of Results

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

a. The exact place, date, and time of sampling;

b. The dates the analyses were performed;

c. The person(s) who performed the analyses;

d. The analytical techniques or methods used; and

e. The results of all required analyses.

6. Civil and Criminal Liability

Except as provided in permit conditions on "Bypassing" (General Condition 17 & 18) and "Power Failures" (General Conditions 16), nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties or liabilities under Section 147.21, Wisconsin Statutes, Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1321) or any other applicable state law or regulation.

7. Property Rights

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive

privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

8. Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

9. Construction of Onshore or Offshore Structures

This permit does not authorize or approve the construction of any onshore or offshore physical structure of facilities or the undertaking of any work in any navigable waters.

10. Confidential Information

Except for data determined to be confidential under Section 147.08(2)(c), Wisconsin Statutes, all monitoring reports required by this permit shall be available for public inspection at the headquarters of U.S. EPA Region V and the Department of Natural Resources.

11. False Statements and Data

Knowingly making any false statement on any report or other document required by this permit or knowingly rendering any monitoring device or method inaccurate, may result in the imposition of criminal penalties in accordance with the provisions of Section 147.21, Wisconsin Statutes.

12. Prohibited Wastes

Under no circumstances shall the introduction of wastes prohibited by NR 211.10, Wisconsin Administrative Code, be allowed into the waste treatment system. Prohibited wastes include those:

a. Which create a fire or explosion hazard in the treatment works,

b. Which will cause corrosive structural damage to the treatment works,

c. Solid or viscous substances in amounts which cause obstructions to the flow in sewers or interference with the proper operation of the treatment works,

d. Wastewaters at a flow rate or pollutant loading which are excessive over relatively short time periods so as to cause a loss of treatment efficiency, or

e. Changes in discharge volume or composition from contributing industries which overload the treatment works or cause a loss of treatment efficiency.

13. Pretreatment

The permittee shall require any industrial user of the permitted facility to meet pretreatment standards established pursuant to Section 147.07(2), Wisconsin Statutes, and to provide records, reports, and/or information related to compliance with such pretreatment standards.

14. Effluent Limit Modification

Pollutants attributable to Significant Industrial Dischargers may be present in the permittee's discharge. At such time as sufficient information becomes available to establish limitations for such pollutants, and after notice and opportunity for public hearings as provided in Chapter NR 3, Wisconsin Administrative Code, this permit may be revised to specify effluent limitations for any or all of such other pollutants.

15. Toxic Pollutants

Nothing in this permit shall be construed to authorize the discharge of any toxic pollutant or combination of pollutants in amounts or concentrations which exceed any applicable toxic

effluent standard or prohibition promulgated under Section 147.07(1). If the promulgated toxic effluent standard or prohibition under Section 147.07(1) for a pollutant present in the discharge is more stringent than any pollutant limitation in this permit, this permit shall be modified or revised in accordance with the toxic effluent standard or prohibition.

16. Power Failures

The permittee is responsible for maintaining adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failure either by means of alternate power sources, standby generators or retention of inadequately treated effluent. **17. Unscheduled Bypassing**

The unscheduled diversion or unscheduled bypass of any wastewater at the treatment works or collection system is prohibited except (i) an inadvertent bypass resulting from equipment damage or temporary power interruption, or (ii) an unavoidable bypass necessary to prevent loss of life or severe property damage, or (iii) a bypass of excessive storm drainage or runoff which would damage any facilities necessary for compliance with the effluent limitations and prohibitions of this permit. In the event of an unscheduled bypass, the permittee shall immediately notify the Department District Office by telephone of such occurrence. In addition, the permittee shall notify the Department of Natural Resources, WPDES Permit Section in writing of each such unscheduled diversion or unscheduled bypass by letter within 72 hours.

18. Scheduled Bypassing

Bypassing of wastewater in order to accomplish maintenance or construction activities is prohibited unless specifically authorized in writing by the Department. Under certain

conditions, it may be necessary to bypass wastewater in order to accomplish such maintenance or construction activities. When such conditions exist, the permittee shall request permission not less than 60 days prior to the proposed date of scheduled bypassing. The request shall include justification for the bypassing and an evaluation of alternatives for minimizing the volume of the bypass. Based upon the information presented, the Department may deny the request, approve it, or approve it with conditions. If the Department determines that the proposal is of significant public interest, the Department may circulate the request for public comment.

Amendment Proposed By Congressman Les Aspin After The July, 1977 Decision By The District Court But Prior To Entry Of The Judgment Order And Prior To Congressional Passage Of The 1977 Amendments.

Sec. (a) Section 402 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:

> "(1) In any case where a State whose waters may be affected by the issuance of a permit under this section fails to submit any recommendations to the permitting State as authorized in subsection (b) (5) of this section, the State failing to make such a submission (and its persons) shall not have standing to bring any action to abate (in whole or in part) as a nuisance under common law in any court of the United States any discharge which would have been the subject of such recommendations."

(b) The amendment made by subsection (a) of this section shall be applicable to any action brought to abate (in whole or in part) as a nuisance under common law in any court of the United States any discharge of pollutants, unless a final decision has been rendered prior to the effective date of this amendment.

E. STEVENSON
ILLINOIS

United States Senate
WASHINGTON, D.C. 20510

October 10, 1977

The Honorable Jennings Randolph
United States Senate
Washington, D.C. 20510

Dear Jennings:

I understand that Congressman Les Aspin plans to urge the joint conference committee on H.R. 3199, the Water Pollution Control Act Amendments of 1977, to adopt language that would attempt to limit the right of a plaintiff to bring suit under the common law of nuisance and would instead require him to seek a remedy under the Water Pollution Control Act of 1972 and to exhaust all administrative remedies under the Act before bringing suit.

You may know that a Federal district court recently found in favor of the State of Illinois as plaintiff in a suit to require the City of Milwaukee to stop its pollution of Lake Michigan. Negotiations on a compliance schedule for Milwaukee are now under way, and a final judgment may be rendered within the next several weeks.

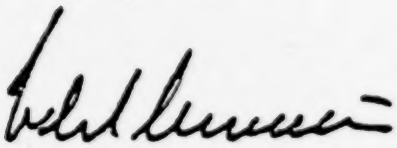
It is unlikely that the Aspin amendment would alter the outcome of that case, which was decided on both the Federal and the State common law of nuisance and on Illinois' environmental protection statute. However, it could well lead to further lengthy litigation in a case already subjected to prolonged litigation. Moreover, it would preclude similar suits by other plaintiffs in the future. Many of them would then be forced to rely solely on the Federal statute, entailing long administrative proceedings before U.S. E.P.A.

I believe that it would be unwise to bar common law suits and to limit standards to those established by that agency when local conditions may justify higher standards and speedier action.

I urge the Senate conferees not only to oppose the Aspin amendment as without merit but also as outside the scope of the conference.

With best wishes,

Sincerely,



Department of Justice
Washington

October 18, 1977

Honorable Edmund S. Muskie
United States Senate
Washington, D.C. 20510

Dear Senator Muskie:

It has come to our attention that a proposal has been made to the conferees on the amendments to the Federal Water Pollution Control Act to adopt an amendment which seeks to overturn a decision of the federal district court for the Northern District of Illinois. This case was decided recently and involved a common law nuisance action between the State of Illinois and the City of Milwaukee. The court determined that damage from pollution was occurring which violated the standards of the common law; among other things, the judge found clear and convincing evidence that the present "discharge of sewage by the defendants into Lake Michigan constitutes a health hazard of serious magnitude to the residents of the State of Illinois." As a result the court ordered a remedy with respect to the municipal sewage treatment system of the City of Milwaukee. Milwaukee is, of course, entitled to appeal this decision to the court of appeals.

We are writing to oppose the amendment under which the Federal Water Pollution Control Act would overturn any common law determination by a federal court, either specifically or generally.

We do this for several reasons. First, Congress and the federal agencies which administer the pollution statutes must of

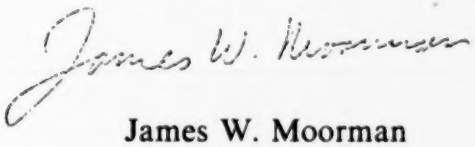
necessity, address themselves to general standards and broad enforcement programs. In the vast majority of cases such a statutory and administrative program will protect citizens from the harm and damage of pollution. But realistically neither the legislature nor EPA can expect to foresee all instances of harm; gaps will occur in the law. The common law serves to give an injured party who may have been neglected by the statute or by an overburdened enforcing agency a form of redress. There is no good argument for removing this opportunity for remedy. The basic principle of the common law of public nuisance is that one is liable for damages caused to another where the benefit of one's action does not outweigh the harm. This is a sound principle. Where it can be shown that pollution has injured someone it should not be a sufficient defense to claim that the generalized standards of a statute have been complied with. Polluters should properly be held to a standard that holds them liable for unnecessarily injuring others and not simply for violating the statutory law. The number of cases under the common law will inevitably be small but where they are meritorious there is no basis for abolishing this cause of action.

Second, the decision in the *Milwaukee* case follows a careful factual inquiry into the matter by the judge and the parties. Unless the basic rationale underlying a decision violates the policies which Congress seeks to follow—and the protection of the public health and the chemical and biological integrity of Lake Michigan are surely not contrary to Congress' wishes—it is unwise for Congress to act as a court of appeals or to pass generalized legislation which sweeps beyond the confines of the particular problem before it. If the true problem here is the financial burden to Milwaukee that problem should be solved directly, perhaps through financial aid, rather than transforming the issue to one of common law remedies and then mistakenly attacking that "problem." This smacks too much of killing the messenger who brings bad news.

We believe we should make these views available to you in considering this most important matter. The relationship of statutory law with common law is a very important one, and our concern is that we not deprive our citizens from access to courts to seek common law remedies when those are appropriate. Total reliance on statutory and administrative agency relief, we do not feel will ever be, nor should it ever be, the exclusive mechanism by which remedies are afforded in our society in any areas where damage or harm or threat of such occurs.

I am supplying copies of this letter to the other conferees on the bill.

Sincerely,



James W. Moorman
Assistant Attorney General
Land and Natural Resources Division

ILLINOIS LAWSUIT--SUMMARY OF MANDAMUS OR PRETRIAL APPEAL AVENUES FROM DISTRICT COURT DENIAL OF OUR MOTIONS TO THE SEVENTH CIRCUIT COURT OF APPEALS

By: Robert A. Melin and Ewald L. Moerke, Jr.

I. It is important to stress at the outset that the practical chance of obtaining any form of pretrial appellate relief even simply in terms of additional trial delay is extremely slim. Nonetheless, if we can afford to devote the necessary manpower, an aggressive appellate program combined with a further motion program before the District Court may spread more thinly the time our opposition lawyers can devote to trial preparation and wear down their energies in this matter a bit.

II. Motions to Dismiss--Mandamus or Pretrial Appeal

A. Pretrial—Appeal. The District Court has refused to certify these issues. There seems little practical possibility in any attempt at pretrial appeal.

B. Mandamus. We should pursue mandamus with respect to our pre-emption and possibly also our primary jurisdiction contention arguing that it is needed to remedy an erroneous assumption of jurisdiction by the District Court. We can make a good argument, I think, that the alleged erroneous assumption of jurisdiction is not based upon a question of fact or a mixed question of law and fact. We have a strong contention that the want of jurisdiction is clear as a matter of law appearing affirmatively on the face of the record and in the United States statutes and administrative regulations. When the want of jurisdiction appears affirmatively on the face of the record or is otherwise clear as a matter of law, the writ of mandamus will issue to remedy an unauthorized assumption of jurisdiction by the lower court. In Re

Winn, 313 U.S. 458, 53 L.Ed. 873, 29 S. Ct. 515; General Tire & Rubber Co. v. Watkins (C. A. 4), 326 F. 2d 926, cert. den., 377 U.S. 909, 12 L.Ed. 2d 179, 84 S. Ct. 1166; Re NLRB, 304 U.S. 486, 82 L.Ed. 1482, 58 S. Ct. 1001; Delaware L. & W.R. Co. v. Rellstab, 276 U.S. 1, 72 L.Ed. 439, 48 S. Ct. 203; Re Skinner & E. Corp., 265 U.S. 86, 68 L.Ed. 912, 44 S. Ct. 446; Re Metropolitan Trust Co., 218 U.S. 312, 54 L.Ed. 1051, 31 S. Ct. 18.

We should argue that there is a tremendous public interest here which favors the granting of the writ of mandamus at this time. We should point out that the taxpayers of Milwaukee County and the City stand the risk of impossibly burdensome tax bills and that the program suggested by the plaintiff will impose an impossible burden upon the community, etc. There is case law to the effect that the public interest may be the actuating reason for granting the writ of mandamus and that the Court may, in view of serious public consequences which would occur if the writ were denied, grant the writ even though the petitioner may not have a clear legal right thereto. Ex rel Settles v. Board of Education (Okla.) 389 P. 2d 356.

III. Indispensable Parties--Intervention and Motions for Joinder

A. Where a party is truly indispensable such that intervention is a matter of right, an order denying intervention is directly appealable by the party unsuccessfully seeking intervention. This is the preferred pretrial remedy for situations where a third party's rights will with certainty be affected by any judgment forthcoming in the action. Burger Chef Systems, Inc. v. Burger Chef of Mich., Inc., (C. A. Mich., 1964) 334 F. 2d 926; Swift v. Black Panther Oil & Gas Co.

(1917), 244 F. 20, 156 C.C.A. 448; Illinois Steel Co. v. Ramsey (1910), 176 F. 853, 100 C.C.A. 323; Credits Commutation Co. v. U.S. (1898), 91 F. 570, affirmed, 20 S. Ct. 636, 177 U.S. 311; McKee v. Brazell (1922), 284 F. 554; New York Public Interest Research Group, Inc. v. Regents of University of State of N.Y. (1975), 516 F. 2d 350; Martin v. Calvar Corp. (1969), 411 F. 2d 552; Huesse v. Camp (1967), 385 F. 2d 694. Thus, the State of Wisconsin, if it sought to intervene reasonably prior to trial and if said intervention was denied, might well have a valid appeal and could perhaps have a shot at restraining trial of the case until the decision on the appeal.

B. Joinder of Indispensable Parties. Perhaps because third parties whose rights will necessarily be affected may intervene and, if denied intervention, procure immediate prejudgment appeal therefrom, orders denying motions for joinder of indispensable parties almost universely (sic) are held to be interlocutory orders from which prejudgment appeal will not lie absent certification by the District Judge. In our case, of course, the District Judge has not as yet ruled on our motion to certify his denial of our indispensable party joinder motion. Perhaps, we will wish to ask him to rule upon this question. Quite universely (sic) also, mandamus is held unavailable as a party seeking joinder is viewed as having an adequate remedy upon appeal from the final judgment. Remedy afforded after judgment, quite in accord with Rule 19(b), FRCP, is simply modification of the judgment of the lower court so as to preclude it from affecting the rights of third parties. (Perhaps by striking out provisions applicable to third parties).

While we would be bucking our heads into rather well-established case law, we could give our opposition some increased work load by appealing immedi-

ately from the denial of our joinder motion on the basis of the following theory. We could argue that the Order denying our joinder motion is a final decision within the meaning of Title 28 of Section 1291, U.S. Code, inasmuch as without joining the other polluters with pollutional discharge inseparable from our own (for example, others discharging into the Milwaukee River) it is utterly impossible for a court to frame any meaningful final judgment favorable to the plaintiffs. This is, in effect, the definition of "final agency action" adopted in Pepsico, Inc. v. F.T.C. (1972), 472 F. 2d 179. The Pepsico decision was written by Chief Judge Friendly who is apparently a judge of some repute. These are certain problems with the decision which we would have to argue around. In the first place the Pepsico court was endeavoring to define a "final agency action" rather than a "final decision". In other words, Pepsico involved an attempted appeal of an agency proceeding pursuant to Title 5, U.S.C., Section 704 prior to termination of that proceeding rather than an attempt to procure a prejudgment appeal from an Order of a lower court pursuant to Title 28, U.S.C., Section 1291.

The Pepsico court is, itself, impressed with the distinction:

> "If the APA uses the term 'final agency action' in the same sense that the Judicial Code speaks of a 'final decision' of a lower court, 28 U.S.C. Section 1291, there could be little doubt about the answer. It is clear that 'denial of a motion to dismiss is not a final order and is therefore not appealable,' . . ." Pepsico, Inc., supra, at p. 185.

Nonetheless, the similarity between Title 5, U.S.C., Section 704 and Title 28, Section 1291 is impressive:

> "Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action." Title 5, U.S.C., Section 704.

There is a second problem from our point of view with the Pepsico decision which is brought out by the following comments of the court:

> "We are unable to conclude, however, that appellants have brought themselves within the possibly over-generous principle with respect to reviewability that we have put forward." Pepsico, supra, at p. 187.

> "We thus conclude that even under the perhaps unduly liberal assumption that review would now lie if the proceeding as presently structured could not result in a valid cease and desist order, . . ." Pepsico, supra, at p. 191.

Thus, the Pepsico Court, itself, held it was adopting a liberal definition of "final agency action for which there is no other adequate remedy in a court".

The Pepsico Court defined "final agency action for which there is no other adequate remedy in a court" in the following manner:

> "a principle that one can find 'final agency action for which there is not other adequate remedy in a court' if an agency refuses to dismiss a proceeding that is plainly beyond its jurisdiction as a matter of law or is being conducted in a manner that cannot result in a valid order." (Emphasis added) Pepsico, supra, at p. 187.

We can certainly appeal the denial of our motions for joinder of indispensable parties (at least the other polluters) and should be able to show cause why the appeal should not be dismissed for reasons that the denial order was interlocutory, by arguing the similarity between Title 5, Section 704 terminology and Title 28, Section 1291 terminology. It would seem possible to frame a most respectable argument inasmuch as it really appears silly to proceed with the trial of a most expensive lawsuit if it be granted that it is impossible to frame an effective, valid and meaningful judgment.

IV. Motion to Recuse the Trial Judge. Title 28, U.S.C., Section 445, deals with disqualification of the trial judge. This section was amended in 1974 to include as a most important ground of disqualification the reasonable appearance of partiality even when that partiality is not an existent fact:

"Section 445(a) Any justice, judge, magistrate or referee in bankruptcy of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

In the event we decide to make a recusal motion, Section 445(a) will serve as our most fertile ground for disqualification. There is no need to state here numerous basis in the facts for appearance of partiality which could easily be stated in our affidavit in support of this motion. We might also see what we can do with Section 455(b)(4):

"He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter or is a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding." (emphasis added)

The general rule in the state courts (those states which do not provide for automatic disqualification or substitution of a judge) is that mandamus is available to obtain an immediate appellate review of a judge's refusal to recuse himself or to certify his disqualification. See 45 A.L.R. 2d 937. That ALR article goes so far as to comment upon the wisdom of allowing mandamus to review denial of motions to recuse:

"By way of comment, it may be suggested that since it is universely (sic) agreed that in the absence of a waiver of the disqualification, any judgment rendered by a disqualified judge is void, and since the question of disqualification is a matter separable from the merits of the pending litigation, a judge's refusal to disqualify upon a timely application therefor should be subject to immediate review, either by appeal or by mandamus, so as to avoid the expense and delay of what might prove to be a wholly abortive trial." 45 A.L.R. 2d at p. 939.

In the federal courts there is a clear cut split of authority. It is the view of the following courts at least that mandamus is appropriate. This is certainly true among the Court of Appeals for the District of Columbia, the Fourth Circuit, the Second Circuit, the Eighth Circuit and a variety of district judges. The only problem is that the Seventh Circuit seems to have come out rather strongly against this view. In Korer v. Hoffman (1954), 212 F. 2d 211, 45 A.L.R. 2d 930 and People ex rel. Tinkoff v. Campbell (1954), 212 F. 2d 785. The Seventh Circuit holds that the mere fact that the petitioners would be put to the inconvenience and expense of what might prove to be a wholly abortive trial does not constitute grounds for invoking mandamus power.

Certainly the view that mandamus is available appears to be the more scholarly and learned view. If we proceed quickly with a motion to recuse taking a writ of mandamus